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ALEXANDER HAMILTON.

"ONE cannot note," writes Professor Bryce, "the disappearance of this brilliant figure, to Europeans the most interesting in the early history of the Republic, without the remark that his countrymen seem to have never, either in his lifetime or afterwards, duly recognized his splendid gifts."[1] Our failure to do justice to Hamilton is undeniable; and it is all the more conspicuous and deplorable because it relates not alone to his gifts, but also, and in an even higher degree, to his services. Of this fact the traditional ingratitude of republics is not a satisfying explanation. From Washington to Lincoln there are many names which prove that the American people can properly appreciate those who serve them. They have not done so in the case of Hamilton, because, in respect to matters of prime importance, he misunderstood them, and they in turn misunderstood and disagreed with him. But peoples, like individuals, feel gratitude towards those benefactors only whom they both understand and approve. The origin and in part the consequences of this misunderstanding and disagreement can be made clear by a brief review of Hamilton's political work.

The public life of Hamilton began in 1774. He was then a student at King's, now Columbia, College. On July sixth of that year he made an extempore address at a meeting of patriots. In the following December appeared the first of his political writings, — a pamphlet in reply to Tory criticism upon the Continental Congress; it was entitled *A Full Vindication.* A few weeks later a second and longer pamphlet was published

[1] American Commonwealth, I, 641.

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entitled *The Farmer Refuted.* Both were widely read and had a marked influence. The author, although probably under eighteen when he wrote the *Vindication*, was already a statesman. For grasp of principles, mastery of facts, clearness of statement and cogency of reasoning, these papers deserve high rank in the political literature of the Revolution. What, at that time, were the politics of this youth, who, up to 1772, had been an inhabitant of the West Indies? Had he, within the short space of two years, become an American? In arguing against the claim that Parliament had an unlimited right to legislate for the colonies, he wrote:

> All men have one common original: they participate in one common nature, and consequently have one common right. No reason can be advanced why one man should exercise any power or pre-eminence over his fellow-creatures more than another, unless they have voluntarily vested him with it. Since, then, Americans have not, by any act of theirs, empowered the British Parliament to make laws for them, it follows they can have no just authority to do it.[1]

It is not (he continued) the burden of a particular tax which the colonies resent:

> The Parliament claims a right to tax us in all cases whatsoever; its late acts are in virtue of that claim. How ridiculous, then, it is to affirm that we are quarrelling for the trifling sum of three pence a pound on tea, when it is evidently the principle against which we contend.[2]

He even went so far as to claim that in the last resort the duties of the colonists were determined by their interests:

> As to the degrees and modifications of that subordination which is due to the parent state, these must depend upon other things besides the mere act of emigration. . . . These must be ascertained by the spirit of the constitution of the mother country, by the compacts for the purpose of colonizing, and more especially by the law of nature, and that *supreme law* of every society — *its own happiness*.[3]

He frequently appealed to the natural rights of man. He tells his Tory opponents:

[1] A Full Vindication, Works I, 6 (Lodge's edition).
[2] *Ibid.* I, 7. [3] *Ibid.* I, 63.

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The fundamental source of all your errors, sophisms, and false reasonings is a total ignorance of the natural rights of mankind. Were you once to become acquainted with these, you could never entertain a thought that all men are not, by nature, entitled to a parity of privileges.[1]

And in a passage which contains an element of poetry as well as profound philosophy he wrote:

The sacred rights of mankind are not to be rummaged for among old parchments or musty records. They are written, as with a sunbeam, in the whole volume of human nature, by the hand of divinity itself.[2]

Such utterances seem to answer in the affirmative the question: Did Hamilton begin public life as an American? The sentiments are those of Otis and Henry. It is easy however to draw from them false inferences. The words have a democratic ring, but there is little that is peculiarly American in them. They express universal rather than American democratic principles. Most of them a Frenchman might have uttered. Moreover, the circumstances under which he wrote make it clear that when Hamilton spoke of the rights of man, he had in mind communities rather than individuals. His quarrel was not with the aristocratic institutions of Great Britain, but with her policy. The question whether the English colonies in America had individually the right of self-government in respect to taxation was then the formal ground of dispute; and this question is radically distinct from that other one in regard to form of government which the colonies were soon to face. To this latter question, the determination of which involved a decision for or against democracy, we have no proof that Hamilton at this time had given serious attention. If he had done so, it could have been only in a speculative way. It seems not unreasonable to assume that he accepted democratic ideas in so far as they sustained the claim of the colonists to the right of self-taxation, and, in possible contingencies, to independence; but he did not consciously commit himself further. We know that certain strongly marked traits of his character inclined him from the beginning not only against democracy, but also against resistance to Great Britain. In the advertise-

[1] A Full Vindication, Works I, 83. [2] *Ibid.* I, 108.

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ment of *The Farmer Refuted*, Hamilton significantly declares that he knows his opinions have not been influenced by prejudice, —

> because he remembers the time when he had strong prejudices on the side he now opposes. His change of sentiment (he firmly believes) proceeded from the superior force of the arguments in favor of the American claims.[1]

Perhaps the most serious blemish of these early writings is an appeal to anti-papist feeling. But this was "a fault of youth"; throughout most of his later writings, and particularly in those which belong to his best period, from 1780 to 1797, Hamilton seeks to allay rather than to excite prejudice. Aside from their use in promoting resistance and preparing for revolution, and their significance as a revelation of character and talent, the chief interest of these papers consists in the fact that in every line they present the writer as in full sympathy with the people of his adopted country. This harmony, however, did not rest upon a durable basis; what made it for a short period possible, was a highly exceptional condition of public affairs in which those political interests wherein Hamilton and the people thought alike, overshadowed those wherein they could never agree. In 1774 the spirit of nationalism was dominant; local and particular interests were, for the time being, forgotten. But American particularism was not dead; it only slept; it was sure to awaken soon, and then the variance between Hamilton and the people must begin.

During the struggle for independence, Hamilton, although occupied with important military duties, found time to enter upon the task to which his life thereafter was to be devoted and (we may truly say) sacrificed — the task, namely, of giving to the United States a national government, and therewith a national character and policy. In a letter dated September 3, 1780, to James Duane, a member of the Continental Congress, Hamilton gave his views "of the defects of our present system, and the changes necessary to save us from ruin." "The funda-

[1] Works I, 53.

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mental defect," he wrote, "is a want of power in Congress." This was due, in his opinion, to three causes:

An excess of the spirit of liberty, which has made the particular states show a jealousy of all power not in their own hands, — and this jealousy has led them to exercise a right of judging in the last resort of the measures recommended by Congress, and of acting according to their own opinions of their propriety or necessity; a diffidence, in Congress, of their own powers, by which they have been timid and indecisive in their resolutions, constantly making concessions to the states, till they have scarcely left themselves the shadow of power; a want of sufficient means at their disposal to answer the public exigencies.[1]

To the plea that Congress "had never any definite powers granted them," he replies:

The manner in which Congress was appointed would warrant, and the public good required that they should have considered themselves as vested with full power *to preserve the republic from harm*. They have done many of the highest acts of sovereignty, which were always cheerfully submitted to: the declaration of independence, the declaration of war. . . . All these implications of a complete sovereignty were never disputed, and ought to have been a standard for the whole conduct of administration. Undefined powers are discretionary powers, limited only by the object for which they were given; in the present case the independence and freedom of America.[2]

Of the Confederation, then under discussion and soon to be established, he says:

It is neither fit for war nor peace. The idea of an uncontrollable sovereignty in each state over its internal police will defeat the other powers given to Congress, and make our union feeble and precarious.[3]

His enumeration of the powers which properly belong to Congress summarizes quite fairly the powers which, according to the interpretation of Hamilton and the early Federalists, were actually conferred on the general government by the constitution of 1787:

Congress should have complete sovereignty in all that relates to war, peace, trade, finance and to the management of foreign affairs; the right of declaring war; of raising armies, officering, paying them, directing their motions in every respect; of equipping fleets, and doing

[1] Works I, 203. [2] *Ibid.* I, 204. [3] *Ibid.* I, 205.

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the same with them; of building fortifications, arsenals, magazines, *etc.*, *etc.*; of making peace on such conditions as they think proper; of regulating trade, determining with what countries it shall be carried on; granting indulgences; laying prohibitions on all the articles of export or import; imposing duties; granting bounties and premiums for raising, exporting or importing, and applying to their own use the product of these duties — only giving credit to the states on whom they are raised in the general account of revenues and expenses; instituting admiralty courts, *etc.*; of coining money; establishing banks on such terms and with such privileges as they think proper; appropriating funds, and doing whatever else relates to the operations of finance; transacting every thing with foreign nations; making alliances, offensive and defensive, treaties of commerce, *etc.*, *etc.*[1]

He favored a more efficient executive, with the following secretaryships: Foreign Affairs, War, Marine, Finance, Trade.[2] A paragraph, prophetic of one of the greatest of its author's achievements, advocates the establishment of a national bank. During the years 1781 and 1782 the substance of this letter was given to the public in a series of essays, six in number, which received the name of *The Continentalist.*

The letter to Duane makes it clear that, in 1780, the views of the writer had already come to differ widely from those generally held by the American people. It is true that he and they were moving in the same general direction, that is, towards national unity and national government, — but not at an equal pace. He was advancing rapidly, constantly, and with confident step; they slowly, reluctantly, with many misgivings and backward turnings. It is certainly remarkable that at the age of twenty-three, and before the adoption of our first constitution, namely the Articles of Confederation, Hamilton should have detected and exposed its inadequacy, should have foretold its failure; and that he should have thought out, in its most important features, that second and durable constitution which went into operation nine years later. In 1780 Hamilton, although far ahead, was still in the same pathway with the people.

Even before the war closed Hamilton had come to regard the states as a highly inconvenient and mischievous element of the

[1] Works I, 214. [2] *Ibid.* I, 215.

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political system. He now entered on a course of experiences which confirmed this view, and, at the same time, caused him to distrust and dislike democracy. In 1782 he became a member of Congress, and struggled manfully to commit that body to a national policy. But his efforts were in vain. Now that the pressure of war was removed the reaction towards state rights carried everything before it. His colleagues admired, but would not support him. In the states the democratic element began to get control and to abuse its power flagrantly.

In 1784, while a private citizen engaged in the practice of the law, Hamilton made a heroic stand against the persecution of the Tories. The *Letters from Phocion*, which this persecution called forth from him, after dwelling upon the inhumanity, the unlawfulness and the impolicy of persecution, direct attention in closing to its influence upon the future of the state:

> Early habits [he wrote] give a lasting bias to the temper and character. Our governments, hitherto, have no habits. How important to the happiness, not of America alone, but of mankind, that they should acquire good ones!
>
> If we set out with justice, moderation, liberality and a scrupulous regard to the constitution, the government will acquire a spirit and tone productive of permanent blessings to the community. If, on the contrary, the public councils are guided by humor, passion and prejudice, . . . the future spirit of government will be feeble, distracted, and arbitrary. The rights of the subject will be the sport of every party vicissitude. . . . With the greatest advantages for promoting it that ever a people had, we shall have betrayed the cause of human nature.[1]

This solicitude for the future and for the world; for the permanent effects of a particular policy upon the character of the people and the government, and thereby upon the welfare of mankind, — is a strongly marked trait of Hamilton and proves the high quality of his statesmanship. Moreover the stand he took not only in these letters but in defending in a celebrated case the legal rights of the hated loyalists, showed that Hamilton did not share the prejudices of the multitude and had the courage to stand alone, if need be, against the multitude. But these considerations do not fully explain his course. His tol-

[1] Works III, 504.

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erant attitude towards the Tories was in part due to the circumstance that he, more justly than most, could understand, and even respect, the motives which had kept them steadfast in their loyalty to Great Britain. This circumstance points to a radical difference between Hamilton and other Americans. His nationalism was as strong and fervent as theirs; but it rested on another and in some respects a broader basis.

Meanwhile the Confederation was being tested. It is needless to recount here the humiliating events of the period from 1780 to 1787. At its close most citizens who had learned to think and feel "continentally" agreed with Hamilton that the Confederation was "neither fit for war nor peace." Disgrace and danger at last made the people ready to consider the propriety of strengthening the federal government. In the events which led to the Convention of 1787, Hamilton had a conspicuous and useful part. In the Convention itself he presented and in a powerful speech advocated an aristocratic and highly centralized form of government. Let us look at some of its features: tenure of office for both the president and the senators of the United States was to be for life. They were to be chosen as now by electors, but these electors were themselves to be chosen by voters having a considerable property qualification. To the president was given an unqualified veto; that is, the president could prevent any measure from becoming law; in the Senate the exclusive right to declare war was vested. The national government was to appoint the governors of the states, and these, like the president, were to have an unqualified veto on state legislation.[1]

[1] *Vide* Works I, 334. The grounds of Hamilton's views on government are indicated by the following quotations from the brief of his speech:

"Society naturally divides itself into two political divisions — the *few* and the *many*, who have distinct interests.

If government [is] in the hands of the *few*, they will tyrannize over the many.

If [in] the hands of the many, they will tyrannize over the few. It ought to be in the hands of both; and they should be separated.

This separation must be permanent.

Representation alone will not do.

Demagogues will generally prevail.

And if separated, they will need a mutual check.

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So far as Hamilton took part in the debates of the Convention, his views were in accord with the principles embodied in this plan of government. His first impression of the constitution, and his forecast of the course of events in case of its adoption, may be gathered from a paper written within a few days after the close of the Convention:

If the government [he wrote] be adopted, it is probable General Washington will be the president of the United States. This will ensure a wise choice of men to administer the government and a good administration. A good administration will conciliate the confidence and affection of the people, and perhaps enable the government to acquire more consistency than the proposed constitution seems to promise for so great a country. It may then triumph altogether over the state governments, and reduce them to an entire subordination, dividing the larger states into smaller districts. The *organs* of the general government may also acquire additional strength.

If this should not be the case in the course of a few years, it is probable that the contests about the boundaries of power between the particular governments and the general government, and the *momentum* of the larger states in such contests, will produce a dissolution of the Union. This, after all, seems to be the most likely result.[1]

In 1780 Hamilton had occupied a position which the people were scarcely able to attain eight years later. In 1787 he occupied a position towards which the people were not progressing — from which indeed their line of advance was steadily deviating. From this time onward the gulf between public opinion and his opinions was to widen constantly.

This check is a monarch.

Each principle ought to exist in full force, or it will not answer its end.

The democracy must be derived immediately from the people.

The aristocracy ought to be entirely separated; their power should be permanent. . . .

They should be so circumstanced that they can have no interest in a change — as to have an effectual weight in the constitution." — *Ibid.* I, 357.

"Gentlemen say we need to be rescued from the democracy. But what [are] the means proposed?

A democratic Assembly is to be checked by a democratic Senate, and both these by a democratic chief magistrate.

The end will not be answered — the means will not be equal to the object.

It will, therefore, be feeble and inefficient." — *Ibid.* I, 359.

[1] Works I, 402.

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But in 1787 there was only one course which nationalists could pursue, and that was to support the proposed constitution. This Hamilton did in a way which, had he done nothing else for his country, would have made him one of the most famous and deserving of Americans. He wrote the greater portion of *The Federalist*, — the unique excellence of which is universally conceded, — and, by dint of courage and argument, he extorted a vote to ratify from the unfriendly convention of New York. His predictions respecting the presidency came true. Washington made a "wise choice of men to administer the government." As secretary of the Treasury Hamilton entered upon the great work of his life. Here for the first and only time in his career, the situation favored the freest exercise of his highest powers. Hitherto, with the single exception of his first youthful efforts, he had always been hampered by wide differences of view between himself and those with and for whom he worked. This was the case when he wrote *The Continentalist*, when he wrote the letters of *Phocion*, when he served in Congress and when he was a member of the Convention of 1787; and it remained true, although its effects were less apparent, during his labors to secure ratification. But at the head of the fiscal department of the administration, he found the situation radically changed. As compared with the earlier times he had, in spite of the growing divergence of view between himself and the people, a free hand. Behind him were Washington and the Federalists; before him was a task which, although great and difficult, — or rather because of its greatness and difficulty, — was to him infinitely attractive; the task, namely, of administering the new and reluctantly accepted national government in such a way as to make the nation itself united, strong, prosperous and respected.

All students of the Federalist period are acquainted with the admirable way in which Hamilton organized his department, and with that comprehensive financial policy which was a chief agency in restoring economic prosperity and in consolidating the Union. In this policy Hamilton provided for meeting in full existing national and state obligations; for easing the bur-

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den of payment by a wise funding scheme; for obtaining a national revenue as we are now doing, by means of imposts and excises; for aiding the operations of the Treasury and facilitating the credit transactions of the people through the establishment of a national bank; and for increasing the economic and thereby the political independence of the country through a protective policy. It would be difficult to overrate the far-reaching educational influence of these measures. There is one chapter in the history of certain American states which no one who cares for the good name of our people likes to read, — the chapter, namely, which narrates the dealings of these states with their creditors. But when we read of repudiation by individual commonwealths, it is consoling and encouraging to remember the honorable course in respect to financial obligations which the national government has thus far pursued. This policy of public honesty was inaugurated by Hamilton. Other statesmen, it is true, and the general sense of the people were on his side; but he led the movement, and on him fell the heaviest blows of the truly formidable opposition. Probably no feature of his plan was attacked so often and so vehemently as the funding scheme; and yet, without this or its equivalent, adequate provision for the public indebtedness could not have been made. One of Hamilton's strongest motives for an honest public policy was the tendency it would have to make honesty and fair dealing elements of American character. In his *First Report on the Public Credit*, communicated to the House of Representatives January 14, 1790, he said:

> In so strong a light . . . do they [the maxims which uphold public credit] appear to the secretary that on their due observance, at the present critical juncture, materially depends in his judgment the individual and aggregate prosperity of the citizens of the United States; their relief from the embarrassments they now experience, — their character as a people; the cause of good government.[1]

In the summer of 1792 (July 29) Washington sent Hamilton a list of objections to the financial policy of the administration. These objections Colonel Mason of Virginia had communicated

[1] Works II, 49, 50.

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to the president, and it was supposed that they represented the views if not the authorship of Jefferson. To these Hamilton made reply on August 18. The paper is remarkable in many ways. The answers to the twenty-one objections were prepared in haste and were copied, so Hamilton wrote Washington in the accompanying note, "just as they flowed from my heart and pen without revision or correction." For this very reason their value as a portrayal of opinions and character is all the greater. In meeting the twentieth objection, that "the owners of the debt are in the Southern, and the holders of it in the Northern division," Hamilton made the dignified and characteristic reply:

> If this were literally true, it would be no argument for or against anything. It would be still politically and morally right for the debtors to pay their creditors.[1]

Hamilton recognized to the full the immense value of credit both in national and private economy; and he recognized further that character, moral as well as industrial, is the most solid and durable foundation of credit. Moreover, in order to estimate justly both the difficulty and the value of his service to the moral and economic welfare of the American people, it is necessary to remember that he lived in a revolutionary age, when the influences which tend to weaken the sense of obligation are unusually active and powerful. That Hamilton's ideal of public honesty was higher than the popular ideal, and that his courage and firmness in supporting his ideal were remarkable, will hardly be questioned by those who realize the demoralization which followed the close of the Revolutionary War — a demoralization which led to and was increased by the stay laws and legal tender acts, which in many states debauched the conscience of the citizen then in much the same way that state repudiation has debauched it in more recent times. It would however be wide of the mark to assert that the opposition to Hamilton was due in any considerable degree to his championship of national honesty. The dislike aroused by the funding scheme and by other features of his policy rested in

[1] Works II, 274.

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the main on other grounds. In the *Report on the Public Credit* already quoted the writer says:

To promote the increasing respectability of the American name; to answer the calls of justice; to restore landed property to its due value; to furnish new resources both to agriculture and commerce; to cement more closely the union of the states; to add to their security against foreign attack; to establish public order on the basis of an upright and liberal policy, — these are the great and invaluable ends to be secured by a proper and adequate provision . . . for the support of public credit.[1]

This enumeration of ends is not unlike that in the preamble to the Constitution. To our ears it is strictly orthodox. But in 1790 it suggested to many what indeed in one sense it was, a plan of campaign against state sovereignty; and at that time state sovereignty was one of the strongest prepossessions of the American people.

The forcible suppression of the Whiskey Insurrection taught a people who hitherto had obeyed only local governments, colonial or state, that they must respect and submit to the authority of the new national government. Other measures, particularly the funding scheme, the bank and, later, the policy of protection, made large classes and powerful interests the permanent allies of the national government, and therefore depressed correspondingly the importance of the states. In all this the government gained, but Hamilton lost. The people were benefited by the discipline, but they did not like the man who administered it. The feeling of the masses may be gathered from the wrathful words of Jefferson, their truest representative. December 28, 1794, he wrote Madison:

The excise law is an infernal one. The first error was to admit it by the constitution; the second, to act on the admission; the third and last will be to make it the instrument of dismembering the Union and setting us all afloat to choose what part of it we will adhere to. The information of the militia, returned from the Westward, is uniform, that though the people there let them pass quietly, they were objects of their laughter, not of their fear; that a thousand men could have cut off their whole force in a thousand places in the Alleghany; that the detestation of the excise law is universal, and has now associated with it

[1] Works II, 52.

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a detestation of the government; and that a separation which perhaps was a very distant and problematical event, is now near and certain, and determined in the mind of every man.[1]

In recalling the relation of Hamilton to protection it is important to observe that his chief motive as set forth in the famous *Report on Manufactures* was to strengthen the Union; he does not mention as a reason for protection that on which the advocates of the present system place their main reliance, namely, its alleged tendency to raise wages. But the end which Hamilton wished to secure through protection is now fully attained. No one questions to-day the unity or the strength of the United States. The recent complimentary assertion of the Russian ambassador at Berlin, that the United States "have nothing to ask and nothing to fear," if not absolutely true, is still far truer of us than of any other people. Our danger is not that we shall suffer injustice, but that tempted by our strength we shall perpetrate injustice.

In respect to foreign policy Hamilton was in hearty accord with Washington. He held that the United States should seek peace and favorable commercial relations with other countries; that they should hold themselves aloof from the quarrels of foreign states; that they should resent foreign interference in our domestic affairs, and that they should resist the extension of European and seek the increase of American influence in the Western world. He was, however, eminently prudent. His first aim was peace. Unlike Napoleon, the soldier in him was subordinate to the statesman. At the close of the War of Independence he was friendly to France. Even at the beginning of the French revolution his good will towards that country was marked; but when the Jacobins came into control his early sympathy changed into aversion and hatred, and he began to look on England as the defender of what was best in modern civilization. In this too he differed from the majority of his fellow-citizens. They remained, even during the reign of terror, steadfast in friendship for France and in enmity towards England.

[1] Jefferson, Works IV, 112.

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Concerning the wisdom and utility of Hamilton's course as a cabinet officer, the conflict of opinion which raged fiercely in his day has almost ceased. Time has amply vindicated both his intentions and his methods. The accusation that he plotted to re-establish monarchy was altogether false. The testimony of contemporaries and his own correspondence establish what indeed there never was reasonable ground for doubting — his loyalty to the republican system. That his measures were wise is proved both by their immediate effect and their later adoption by his enemies. Apart from the charge that he was a monarchist, the substance of the indictment against Hamilton is that to a hurtful degree he sought to strengthen the federal government and to weaken the states. But when Hamilton retired from office was the federal government too strong? Has it been so at any subsequent time down to the close of the Civil War? Have the states at any time previous to 1865 been too weak to discharge the functions which properly belong to them? On the contrary, is it not true that within the period named the public interests suffered oftener from defect of power in the national government and excess of power in the states, than from excess in the former and defect in the latter? And if since 1865 centralization and consequent depression of the states may seem to any one to have proceeded too far, is not the evil traceable to causes quite outside of Hamilton's policy? It is moreover a fair question whether the Union could have withstood the shock of secession had it not been for the strength which Hamilton gave to the national government.

After his retirement from the cabinet Hamilton continued his practice of seeking to educate public opinion through essays published in the newspapers. Under the signature of *Camillus* he discussed and defended in a masterly way the treaty which Jay had recently negotiated with England. The essays numbered thirty-eight and had, in the decision of the very important question at issue, an influence which may be compared with that of *The Federalist* on ratification. Many other essays appeared during the years 1796, 1797 and 1798, most of which bore on the controversies with France. In some of these one

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notes a marked change of tone. Denunciation is a prominent feature. The appeal is no longer to the people as a whole but to the Federalists. This change, it is true, was a natural consequence of the development of parties and the growth of partisanship; none the less it signifies loss and deterioration.

To these closing years of the century belongs the unhappy chapter which narrates the quarrel with John Adams. We cannot exonerate Hamilton. His intrigues against Adams in successive presidential campaigns, although they may have been prompted by zeal for the public welfare, were unnecessary and mischievous. The pamphlet attack in 1800, which tried to prove that the Federalist candidate was unfit for the presidency, and then advised the party in spite of his unfitness to vote for him, showed that its author, under strong temptation, was capable of jeoparding the success of his party for the sake of gratifying personal animosity. His earlier relations with Adams' cabinet tended to pervert for the time being the natural functions of that very important body. Adams had inherited his cabinet from Washington. Its three most important members, Pickering, Wolcott and McHenry, were at the outset unfriendly to Adams and soon became sharply hostile. They looked upon Hamilton as the real head of the Federalist party and maintained with him a close correspondence. Their letters contain much bitter criticism of the president, and betray now and then something very like treachery. Hamilton undertook with the aid of the secretaries two things: first, to direct the policy of the administration; second, to obtain matter which he could employ in his warfare upon Adams. The mere statement of the facts condemns him and his allies. Although justly rated as a man of honor, Hamilton was guilty at times of strange lapses, and this was one of the gravest. The intrigue was an act of political libertinism; its essence was infidelity.[1]

[1] Mr. Lodge takes a different view: "The fact that he was not personally on good terms with Adams does not affect the matter. Hamilton was fully entitled to write private letters to members of the cabinet, and they had a right to receive them. The fact that the secretaries, after they found themselves in opposition to the president, ought to have retired, is a wholly distinct matter, and must be discussed on different grounds. If they chose to be guided by Hamilton, a private individual and

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Again, Hamilton's course towards Adams subjects him to censure as a party leader. Good leadership requires the fullest use of every means which can be honorably employed to promote party success. John Adams was an important factor in the political situation. He was confessedly one of the greatest of Americans. He stood nearer to the people than most of the Federalist leaders. He, better than they, could mediate between the aristocratic conservative classes and the multitude. But Hamilton's treatment of Adams was calculated to lessen, and undoubtedly did lessen, the possible service both of Adams and himself to Federalism and to the Union. His attempt to be the power behind the throne, while he was the enemy of its occupant, was, to say the least, a wide deviation from the honorable and patriotic course which he usually pursued.

The year 1800 marks the darkest period in the life of Hamilton. During its early months he made the attack upon Adams. On May 7, he wrote to John Jay, the Federalist governor of New York, as follows:

> You have been informed of the loss of our election in this city . . . the moral certainty is therefore that there will be an anti-Federal majority in the ensuing legislature; and the very high probability is that this will bring Jefferson into the chief magistracy, unless it be prevented by the measure which I shall now submit to your consideration, namely the immediate calling together of the existing legislature. . . . Scruples of delicacy and propriety, as relative to a common course of things, ought to yield to the extraordinary nature of the crisis. They ought not to hinder the taking of a legal and constitutional step to prevent an atheist in religion and a fanatic in politics from getting possession of the helm of state. . . . The calling of the legislature will have for its object the choosing of electors by the people in districts; this will insure a majority of votes in the United States for a Federal candidate. . . . In

unofficial leader, that was their affair, not his." — Henry Cabot Lodge, Alexander Hamilton (American Statesmen Series), p. 234.

It seems to me, on the contrary, that if these men, over whom Hamilton had an almost controlling influence, chose to do a public and official wrong, it was emphatically "his affair"; simply as a good citizen he was under obligation to dissuade them. The measure of Hamilton's responsibility appears when we reflect that he instigated the misconduct of Wolcott and Pickering and was their accomplice; and that he himself had served in the cabinet under Washington, and knew better than most what was due to the president from a member of the cabinet.

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weighing this suggestion you will doubtless bear in mind that popular governments must certainly be overturned, and, while they endure, prove engines of mischief, if one party will call to its aid all the resources which vice can give, and if the other (however pressing the emergency) confines itself within all the ordinary forms of delicacy and decorum.[1]

Upon the back of this Machiavellian letter Jay wrote the following words: "Proposing a measure for party purposes which it would not become me to adopt." In December Hamilton was himself again. The presidential election had been transferred to the House of Representatives and the presidency lay between Jefferson and Burr. The Federalists, with whom the decision rested, were disposed to support the latter. To prevent this degradation of the party, the office and the nation, Hamilton exerted himself to the utmost, and with success.

The substance of the remarkable letters through which Hamilton sought to save the presidency from Burr may be expressed in these words: Democracy is a terrible evil; but, since the government must be democratic, let us place it in the hands of Jefferson, who will pursue "a temporizing policy," rather than in the hands of Burr, who is "an American Catiline."

The differences with his party which began in 1800 continued to the end. The Federalists apostatized from national doctrines: he remained true. They censured and he approved the purchase of Louisiana. The projects of disunion which certain Federalist leaders favored, he steadfastly opposed. In 1804 he entered the lists a second time in order to prevent a coalition between his party and Burr; and this effort, although successful, cost Hamilton his life.

This brings to a close the chronological survey of Hamilton's work. What of that work as a whole? The thirty years between his first public appearance, in 1774, and his final struggle with Burr, in 1804, belong to a great period in the history of the world. In the United States three revolutions were accomplished: the first separated the colonies from Great Britain; the second gave us the constitution and the Federalist administrations; the third placed the national government in

[1] Works VIII, 549.

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the hands of Jefferson. Hamilton's services were rendered in connection with the first and second of these revolutions — chiefly the second. The triumph of the third restricted the sphere of his public activity and usefulness to very narrow limits. That he assisted materially in securing the independence of the colonies is not questioned. Still, his relation to that movement was very unlike that of his fellow-colonists. Only in a superficial sense was the Revolution due to the quarrel over the question of taxation. Rightly viewed, this quarrel determined the time and method of a separation; but the real cause of separation was incompatibility of character and interests between the American and British peoples. In the course of the century and a half — some five generations — from the first period of rapid settlement to the outbreak of the Revolution, the English colonists became Americans; and a new civilization grew up which, in important particulars, was unlike the old. The taxation grievance by itself could never have converted a law-abiding people, such as the colonists were, into revolutionists. What did most to bring this about was the recognition, on their part, that in character and spirit there had come to exist between them and their British kindred wide and growing differences; and that out of these differences must arise a perpetual conflict of interests and policy. In this new civilization the two most characteristic features were hostility to privilege and attachment to local self-government, — in other words, democracy and what, owing to the peculiar form of its later most prominent manifestation, we call state rights. Hamilton did not feel in any marked degree the motives which spring from these two characteristic elements of American civilization. He had not inherited an American character. His ancestry had had no part in the distinctive life of the colonies of the mainland. He came to this country, as he himself tells us, when "about sixteen." Judging from the pamphlets which he published only two years later, he must have been, when he left his West Indian home, as mature as the average American of twenty-two or perhaps of twenty-five. To him America was neither a birthplace nor a nursery; and only in a qualified sense

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can it be called a school. It was rather a field into which he entered after his character was formed and his equipment for work was nearly completed. Hence he took part in resisting the mother country, not because he wished democratic institutions, nor because he wished the colony of New York to enjoy the right of self-taxation, but, to use his own words, because the mother country "attempted to wrest from us those rights without which we must have descended from the ranks of freemen." And these rights, as he understood them, were those enjoyed by Englishmen in England. Nevertheless when, owing to the existence in others of motives which he did not feel, resistance developed into revolution, he too became a revolutionist and a very effective one. Even before independence was achieved, Hamilton in common with other patriots was called upon to answer two questions: first, shall the United States be a confederacy or a nation; second, what shall be their institutions and their type of civilization? It is the way in which he answered these questions that has made Hamilton one of the greatest characters in American and in modern history. His reply to the first was that the United States must be a nation, and to this end must have a national government clothed with ample powers to provide for every national want; that the administration must pursue an energetic and centralizing policy in order that the character of the people and the traditions of government might become thoroughly national. This was Hamilton's theory. At the close of the war of independence its realization seemed impossible. He saw in the thirteen states not a nation, but an aggregation of turbulent, semi-socialistic democracies, in which the national idea and the highest national interests were being sacrificed to local and class interests and to the idea of the unqualified sovereignty of the individual state. Against these tendencies his struggle, although heroic, was in vain. The riot of democracy and particularism had to go on until those who owned property and those who cared for law and order became thoroughly alarmed. With the rebellion of Shays began in earnest that movement which was both an aristocratic reaction against democracy,

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and a nationalist reaction against state rights, — the movement which gave us the constitution of 1787 and twelve years of Federalist supremacy. This reaction was Hamilton's opportunity. He was its master spirit. How wisely he used it in promoting the nationalization of the American people and their institutions we already know.

Not less distinct and scarcely less important was Hamilton's answer to the question what should be the type of civilization in the United States. He wished to create here, as far as the situation would permit, an American England. In all that he did, the models and working ideas were of English origin. He praised the English constitution in the Convention of 1787; the features of our constitution which gave it most resemblance to that of England he defended convincingly in *The Federalist*. In his career as secretary of the Treasury he probably came nearer than any other American cabinet officer to wielding an influence over Congress comparable with that of a British prime minister over Parliament. The principles that underlie his financial policy are in the main those which had been tested and approved by the experience of England. His tolerant attitude towards the Tories was the natural expression of his English sympathies as well as of his sense of justice and humanity and of wise public policy. But in his use of English ideas he was not a mere copyist. The originality and wisdom with which he modified are as striking as the boldness with which he appropriated. Jefferson and, later, John Adams called Hamilton "British." The word was applicable only in so far as it implied a purpose to establish here those features of the English system which were adapted to the American character and situation. In so far as it suggested a willingness to sacrifice American to British interests, it was grossly unjust.

The value of the service which Hamilton rendered in aiding to re-establish the processes which connected the development of the United States with that of England, is greater than we can easily realize. Although England has made it hard for us to acknowledge the debt, the words of Jay are true:

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It certainly is chiefly owing to institutions, laws and principles of policy and government originally derived to us as British colonists, that, with the favor of Heaven, the people of this country are what they are.[1]

It is also true that a people, as little as an individual, can afford to throw away what is inherited. But, owing to the animosities which the war kindled, to the obstinate unfriendliness of England, and to the seductive policy of France, we were then under strong temptation to develop our national system on a basis too exclusively American and French. From this folly Hamilton helped to deliver us.

Any just estimate of Hamilton's work must take into the account what he did for the education of the public. His usual method of seeking support was through appeals to the reason of thoughtful and patriotic citizens. In this his success was phenomenal. Friends and foes testified that in the qualities which enable a writer to convince, Hamilton was without a rival. In what he wrote there was rarely a trace of the partisan, never of the demagogue. Much of his work was done while questions relating to the constitution engaged the attention of the public. For the treatment of such themes he had a singular aptitude. The extent of his writings is as remarkable as their solidity. He wrote, often at considerable length, on every important public question which arose during the Federalist period. The result was a collection of writings which embody the best political thought of the time. Indeed, considering both range and quality, it is scarcely venturesome to say that Hamilton's works exceed in value those of any other American statesman.

What were the defects of Hamilton's statesmanship? First, he failed as a party leader. This was in part because he would not accept the conditions of successful leadership. The party leader who succeeds simply goes ahead in the direction which the party is inclined to take. The apparent leader is in reality the follower. But Hamilton marked out his own course and would not deviate from it. In the second place, his attitude

[1] Life and Writings of John Jay, II, 262.

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towards democracy was mistaken. Democracy was not, as he wrote Sedgwick a few hours before his death, "our real disease." That he thought it was, is not surprising; for in him the love of order was instinctive, and the predilection for conservative methods of progress was strongly marked. In his day, moreover, democracy, both here and in France, showed itself at its worst. But, as we can now see, democracy is essential to progress; it is both the means and the fruit of the diffusion of civilization.

Equally mistaken was Hamilton in wishing to destroy the states. They hindered, it is true, the work of consolidating the Union; but at the same time they stood for the invaluable principle of local self-government. The evil which they did was of minor consequence when compared with that which their destruction would have caused.

These defects, considerable as they are, did not, during the period of his greatest usefulness, seriously affect the work of Hamilton; but during his closing years, they proved fatal to his influence and, it is mournful to add, to his peace of mind. In 1801 the American people came under the sway of Jefferson and refused to listen any longer to the conservative statesman who hated and warred upon their most cherished political beliefs. Hamilton recognized his isolation and not without bitterness wrote:

> Mine is an odd destiny. Perhaps no man in the United States has sacrificed or done more for the present constitution than myself; and contrary to all my anticipations of its fate, as you know from the very beginning, I am still laboring to prop the frail and worthless fabric. Yet I have the murmurs of its friends no less than the curses of its foes for my reward. What can I do better than withdraw from the scene? Every day proves to me more and more, that this American world was not made for me.[1]

But he had not failed. Although in hands that he distrusted, the republic was safe; and no one had done more than he to make it so.

ANSON D. MORSE.

[1] Works VIII, 591.

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THE GENERAL PROPERTY TAX.

IT has been said recently that there is no science of finance in England. The same remark is equally true of America, at least in the domain of public revenue. In no other civilized country has there been less discussion of the principles of taxation; in none can there be found a more unsatisfactory system. The reason is plain. As long as prosperity was general and the public expenses were small, taxation was light and its burden was scarcely felt. But during the last few decades, with the complicated demands of modern civilization, public expenditures, both local and national, have increased to such an extent as to exert a sensible pressure on the population. The problems of public revenue have been pushed to the front. The expressions of discontent with various phases of our financial system have become numerous and loud. But for the most part the discussion has been superficial and the conclusions reached have been inadequate.

There is perhaps no single feature of our tax system that is commonly thought to be more thoroughly American than the general property tax. The proportional taxation of all property is held to be an instinctive feeling original to and thoroughly ingrained in the minds of our people. And yet it may be said that no institution has evoked more angry protest, more earnest dissatisfaction, than this very tax. Its opponents, however, have confined themselves to a portrayal of its practical shortcomings. No one has hitherto attempted to give the deeper reasons why the property tax is unsuited to the present generation or to discuss the subject in its wider relations with the science of finance in general. It is proposed to show in this series of papers that our property tax is by no means original to this country; that it has gone through precisely the same evolution in many other places. It is further proposed to prove that the property tax is as destitute of theoretical justification

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as it is defective in its practical application. And it is proposed, finally, to discuss the reforms of our direct taxation — some of them partly completed, some projected, and some hitherto neglected.

I. *Practical Defects of the Property Tax.*

The defects of the general property tax may be discussed under five heads.[1]

1. *Lack of uniformity*, or inequality of assessment. The property tax with us is an apportioned, not a percentage tax. According to the latter method the tax would be levied on the individual taxpayer by means of a fixed rate or percentage of all property. According to the actual method the total amount to be raised by the state is first ascertained, and is then apportioned to the various subdivisions according to the appraised valuation in each. The final rate of taxation is obtained by adding the local tax to the state tax. The rate of taxation ought therefore to vary only with the local needs, and would indeed so vary if property were everywhere assessed uniformly. As an actual fact, however, this is far from being the case. In most of the commonwealths the tax laws provide for the assessment of property at its "fair cash value." And in all the states it is expected that the valuation shall everywhere be made at a uniform rate. Yet it is a notorious fact that in scarcely any two contiguous counties is the property — even the real estate — appraised in the same manner or at the same rate. In regard to the manner, it frequently happens that corporation property, *e.g.* the roadbed of a railway, is assessed in one county at an immense sum per mile and is treated in the adjacent county like a piece of grazing land.[2] In regard to the

[1] In the monograph entitled Finance Statistics of the American Commonwealths (Publications of the American Statistical Association, Dec. 1889) I have collected a large number of citations from the commonwealth financial reports for the past year. The reader is referred to that publication for the verification of statements for which no special authority is adduced in these pages. See especially pages 401–417.

[2] In New York, for example, two adjoining counties made a difference of $24,000 per mile in assessing the same railroad. Other counties varied $20,000 per mile. Report of the State Assessors, 1879, p. 19.

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rate, the assessors follow the practice sanctioned by local usage or decide by mere caprice. The official reports abound with complaints or open confessions that property is assessed all the way from par to one twenty-fifth of the actual value. In one county the property is listed at its full worth; in the next county the assessment does not exceed a tithe of its value.[1] That this is a glaring infraction of the fundamental rule of equality in taxation is apparent. As between counties it leads to undervaluations which give an entirely fallacious view of the public resources. As between individuals it results in gross injustice. A tax rate of a given amount on one may be double, quintuple or decuple the nominally equivalent tax on another. The first constitutional injunction — that of uniformity of taxation — is flagrantly violated. Assessors are compelled openly to disregard their oath, or to incur certain defeat at the next election.[2] There is no pretence of complying with the law.

An escape from these evils has been sought in the creation of boards of equalization. A large number of commonwealths[3] have attempted to correct the undervaluation of the county officials by giving a state board power to raise or lower the valuations (or in some cases the rate) in the hope of securing a substantial uniformity. But the effort has been very imperfectly successful. The composition of the boards is such as to render any comprehensive scrutiny of the county returns almost impossible. Even were the boards to be constituted in an ideal manner, the local jealousies and bickerings would still continue

[1] Biennial Report of the Auditor of Public Accounts of Nebraska, 1886, p. 4. In New York the range is from 18 to 100 per cent. Report of State Assessors for 1883, p. 3. In Illinois the range is from 5 to 100 per cent. Report of the Revenue Commission of Illinois, 1886, p. ii.

[2] Report of the State Assessors of New York for 1886, p. 20. The report for 1884, p. 4, speaks of the assessors' open "intent to ignore the law." In one case an assessor objected to a certain declaration, and declared that it would be necessary to swear the merchant. The latter answered: "If you swear me, I'll vote against you next time." West Virginia Tax Commission, Preliminary Report, 1884, p. 13.

[3] Boards of equalization are found in Arizona, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, New Hampshire, New York, Ohio, South Carolina, South Dakota, Vermont, Wisconsin and Wyoming.

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to prevent any just distribution of the burdens.[1] The boards themselves confess that such distribution is impossible under our present system.[2] Boards of equalization are thus at best a mere makeshift, a clumsy and cumbrous attempt to accomplish the impossible. In the drastic phrase of Mr. Townsend: "A people cannot prosper whose officers either work or tell lies. There is not an assessment roll now made out in this state that does not both tell and work lies."[3] As long as this is true, boards of equalization are of little avail.

2. *Lack of universality*, or failure to reach personal property. This is a defect which, although the most flagrant, perhaps requires the least commentary; for it is so patent that it has become a mere byword throughout the land. Personal property nowhere bears its just proportion of the burdens. And it is precisely in those localities where its extent and importance are the greatest that its assessment is the least. The taxation of personal property is in inverse ratio to its quantity. The more it increases, the less it pays. The reason is plain. So far as it is intangible, personal property escapes the scrutiny of the most vigilant assessor; so far as it is tangible, it is exempted in its chief form, as stock in trade, by every intelligent official. In the mad race for wealth it would be suicidal for the local assessors in large cities to assess the merchant's capital, with the sole result of driving it away to localities more favored by their financial officers. It is scarcely necessary to give figures to substantiate these statements. The tenth census of the United States asserts that from 1860 to 1880 the assessed valuation of real estate increased from $6,973,006 to

[1] "The strife between counties to reduce assessments has not ceased and in all probability will not, as long as assessors are elected, or selfishness be a passion in the human breast." Report of the California State Board of Equalization for 1885 and 1886, p. 4.

[2] "No board or officials, however diligent or however conversant they may be with the subject, can make an equalization which to themselves will be absolutely satisfactory." Annual Report of State Assessors of New York for 1887, p. ii. From ocean to ocean the same complaint is found.

[3] M. I. Townsend, in Proceedings and Debates of the Constitutional Convention of New York, 1867–68, III, 1945. *Cf.* the first Report of the (New York) Commissioners to revise the laws for the assessment and collection of taxes (1871), p. 33.

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$13,036,767, while that of personal property decreased from $5,111,554 to $3,866,227.[1] In California personal property was assessed in 1872 at 220 millions of dollars, in 1880 at 174 millions, and in 1887 at 164 millions, — a net decrease in fifteen years of 56 millions. Real estate increased during the same period from 417 millions to 791 millions.[2] Personal property paid 17.31 per cent, real estate 82.69 per cent of the taxes. In Illinois the figures for 1888 are 20.18 per cent and 79.82 per cent respectively. In Cook county (Chicago), out of a total valuation of 210 millions, personal property paid only 14 per cent.[3] In New York the figures are as follows:[4]

	Real Estate.	*Personal Property.*
1843	$ 476,999	$118,602
1859	1,097,564	307,349
1871	1,599,930	452,607
1878	2,373,418	364,960
1888	3,122,588	346,611

The proportion paid by personal property has decreased steadily every year, until according to the last figures it pays but 9.99 per cent of the state taxation, over against 90.01 per cent falling on real estate.[5] In New Jersey, in 1887, in one township the real estate was assessed at $272,232, the personal property at $591. In another the figures were $2,274,900 and $47,150 respectively![6] In New York the personalty was returned in one town at $5,000, in the adjoining but no more prosperous town at $700,000.[7]

These striking figures become ridiculous when it is remembered that in our modern civilization the value of personal property far exceeds that of real estate as understood by the taxing power. It is true that the legal distinction between real and

[1] Tenth Census of the United States, vol. vii, p. 9.
[2] Biennial Report of the State Comptroller for 1887–88, p. 135.
[3] Biennial Report of the Auditor of Public Accounts, 1888, p. 204.
[4] First Annual Report of State Assessors, 1860, p. 13; Report for 1888, p. 13.
[5] Report of State Assessors for 1888, p. 5.
[6] Report of the Comptroller of the State of New Jersey for 1887, pp. 57, 95.
[7] Report of State Assessors for 1877, p. 10.

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personal property fluctuates in the various commonwealths; but in the eyes of the assessors real estate generally includes only land and the fixtures thereto, all the other forms of wealth being regarded as personal property. In California, indeed, the constitution of 1879 provides that mortgages of real estate shall be regarded and taxed as realty. The law of Massachusetts and Oregon is similar. But even if mortgages were counted as real estate, and even if (as is nowhere done) other certificates of ownership in realty were also counted as real estate, it would still remain true that personal property constitutes the greater part of the national wealth. For personal property does not denote merely movable objects. It includes money, public obligations, and the vast mass of intangible property represented by securities of corporations, of which only a small portion are certificates of ownership in realty. Above all, personal property includes the entire and ever-increasing annual products of agriculture and industry — the gigantic mass of modern wealth devoted mainly to consumption, but existing as the stock in trade of individuals.[1] Even in our most western commonwealths, where the communities are still mainly agricultural, it is an acknowledged fact that the personalty exceeds the realty. The auditor of Washington tells us that if a true valuation could be reached it is "clear and incontestable that the wealth of the territory in personal property, for the purposes of taxation, would largely predominate over that of real estate."[2] And if this is true of the far West, how much greater must be the relative proportion of personalty in the busy marts of the East.[3] Yet the more differentiated the industry and the more predominant the personalty, the less does the latter contribute to the public charges; until in the

[1] This element alone is calculated in the tenth census as over 8,000 million dollars, out of an aggregate true valuation of property of 43,000 millions.

[2] Report of the Territorial Auditor to the Legislative Assembly, 1887, p. 94. *Cf.* Biennial Report of the Auditor of Iowa, 1881, p. 8, and that of the Comptroller of Idaho, 1887–88, p. 74, to the same effect.

[3] *Cf.* New York State Assessors' Report for 1880, and Comptroller's Report for 1889, p. 33: "I am sure that the actual value of the personal property legally liable to taxation exceeds that of the real estate."

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foremost state of the Union realty pays more than nine-tenths and personalty less than one-tenth.

The taxation of personal property, I repeat, is in inverse ratio to its quantity. The more it increases, the less it pays. The general property tax thus sins against the principle of universality of taxation even more than against the principle of uniformity. In the middle ages whole classes were exempt by express provision of the law; in our time and country whole classes are exempt by the inevitable working of the law. It is the law which is equally at fault in both cases.

3. *Incentive to dishonesty.* One of the worst features of the general property tax is that any attempt to enforce the taxation of personalty by more rigid methods results in evasions and deceptions. The property tax necessarily leads to dishonesty, and this for two reasons. In the first place, under our system whole classes of personalty are exempt from state taxation. The most familiar examples are imported merchandise in the original package; United States bonds, notes, checks and certificates; property *in transitu;* goods produced in another state sent on commission; deposits in savings banks, *etc.* The temptation for the taxpayer to convert his property temporarily into these classes is generally irresistible. Not only does the law hold out to individuals inducements to practice fraud, but it sustains them in its commission.[1] Secondly, wherever any pretence is made of enforcing the tax on personalty, and especially where the taxpayers are required to fill out under oath detailed blanks covering every item of their property, the inducements to perjury are increased so greatly as to make its practice universal. The honest taxpayer would willingly bear his fair share of the burden; but even he cannot concede his obligation to pay other men's taxes. The only result of more rigid execution of the law is a more systematic and universal system of deception. Official documents tell us that "instead of being a tax upon personal property, it has in effect become a tax upon igno-

[1] In People *ex rel.* Ryan, 88 N. Y. 142, the Court of Appeals held that the assessors were bound by a transaction which the court itself declared to be "a device to escape taxation."

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rance and honesty. That is to say, its imposition is restricted to those who are not informed of the means of evasion, or, knowing the means, are restricted by a nice sense of honor from resorting to them."[1] The tax commission of New Hampshire declares that "the mere failure to enforce the tax is of no importance, in itself considered, in comparison with the mischief wrought in the corrupting and demoralizing influences of such legislation."[2] The Illinois commission asserts that the system is "debauching to the conscience and subversive of the public morals — a school for perjury, promoted by law."[3] The Connecticut commission maintains that the resulting "demoralization of the public conscience is an evil of the greatest magnitude."[4] The West Virginia commission tells us that "the payment of the tax on personalty is almost as voluntary and is considered pretty much in the same light as donations to the neighborhood church or Sunday-school."[5] And almost every annual report of the state comptrollers and assessors complains bitterly that the assessment of personalty is nothing but an incentive to perjury.[6]

4. *Regressivity.* Taxes are progressive when their increase is more than proportional to the increase of the property or income taxed, *i.e.* when the rate itself increases with the increase of the property. Taxes are regressive when the rate increases as the property or income decreases. The general property tax in its practical effects is regressive. For the tax on personalty is levied practically only on those who already stand on the assessor's book as liable to the tax on realty. Those who own no real estate are not taxed at all; those who possess realty bear the taxes for both. The weight of taxation thus rests on the farmer. In the rural districts the assessors

[1] Report of the Commissioners of Taxes and Assessments in the City of New York, 1872, p. 9.

[2] Report to the Legislature of Hon. George Y. Sawyer, 1876, p. 16.

[3] Report of the Revenue Commission, 1886, p. 8.

[4] Report of the Special Commission on Taxation, 1887, p. 27. *Cf.* the New Jersey Tax Commission Report, p. 11.

[5] Preliminary Report of the Tax Commission, 1884, p. 10.

[6] *Cf.* Report of California Board of Equalization, 1885–86, p. 6.

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add the personalty, which is generally visible and tangible, to the realty and impose the tax on both. We hear a great deal about the decline of farming land. But one of its main causes has been singularly overlooked. It is the overburdening of the agriculturist by the general property tax. What is virtually a real property tax in the remainder of the state becomes a general property tax in the rural regions. The farmer bears not only his share, but also that of the other classes of society. Thus official documents tell us that "the class of property that escapes taxation most, is the class of property that pays the largest dividends." [1] And in general it may be said, with our state auditors, that "the property of the small owner, as a rule, is valued by a far higher standard than that of his wealthy neighbor." [2] Or, as it is put by others:

> In every portion of the state we find the most unproductive property, and that of the lowest real value, assessed at the highest ratio. The rule holds good that those who have to battle hardest with life for subsistence, are compelled to pay the most onerous taxes on the real value of their property.[3]

It is no wonder that in their desperation the small farmers should cry out for the equal enforcement of the laws taxing personalty; it is no wonder that they should attempt to stem the current in ignorance of the impossibility of the task. They have forgotten Walpole's saying, that it is safer to tax real than personal estate, because "landed gentlemen are like the flocks upon their plains, who suffer themselves to be shorn without resistance; whereas the trading part of the nation resemble the boar, who will not suffer a bristle to be pluckt from his back without making the whole parish to echo with his complaints." [4]

5. *Double Taxation.* Double taxation is of two kinds: that which is *prima facie* double — double taxation in itself — and

[1] Biennial Report of the Auditor of Iowa, 1880–81, p. 6.

[2] Biennial Report of the Auditor of Kentucky, 1887, p. iv.

[3] Report of the State Assessors of New York, 1873, p. 9. *Cf.* West Virginia Tax Commission, Preliminary Report, 1884, p. 8; Report of the Comptroller of Tennessee, 1888, p. 16.

[4] *Cf.* Sinclair, History of the Public Revenue, vol. iii, appendix, p. 79.

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duplicate taxation arising from interstate complications. The second form will be omitted here, as it is not peculiar to the property tax but may arise in connection with almost any direct tax. The existing chaos on this point will be discussed in another article. I confine myself here to the first form.

Perhaps the greatest weakness of our general property tax, and the one which has given rise to the most interminable discussion, is connected with the subject of debt exemption. On the one hand it is maintained that an offset should be made for all indebtedness, whether mortgage debt on real property or general liabilities on personalty. Individuals should be taxed on what they own, not on what they owe. To tax both borrower and lender is double taxation. This is the view of the Connecticut commission,[1] and the practice of a few states accords with it. On the other hand the majority of American investigators assert that deduction for indebtedness results practically in such injustice and deception as to be utterly unendurable. They therefore demand that there should be no offset of debts against property. This is the view of the Massachusetts and New Jersey commissions,[2] and the practice in many states.

Both these views are correct. To tax both lender and borrower for the same property is plainly double taxation, and therefore unjust. The fallacy of the contrary opinion consists in looking at the property rather than at the owner. What the state desires to reach is primarily the individual. It taxes his property simply because it considers this a test of his ability to pay. But his ability is manifestly reduced *pro tanto* by his debts. His true taxable property therefore consists in his surplus above indebtedness. Otherwise one would be taxed for what he has, and another for what he has not. This is the view accepted by all European authorities.[3] The only American scientist who holds to the contrary opinion, Amasa

[1] Commission of 1887, p. 26.

[2] Massachusetts Commission of 1875, pp. 95–98; New Jersey Commission of 1880, p. 20.

[3] Roscher, Finanzwissenschaft, p. 336; Wagner, Finanzwissenschaft, II, 432.

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Walker, does so in a half-hearted way; for he bases his view on utterly arbitrary data, confesses that much hardship will ensue, and finally concludes that the income-tax principle is the only just one.[1] To tax both property and credits, both lender and borrower, is plainly incorrect in principle, and inequitable in practice.[2]

On the other hand it is equally true that deduction for debts is thoroughly pernicious in its operation. It is the universal testimony that no portion of the tax laws offers more temptations to fraud and perjury than this system of offsets. The creation of fictitious debts is a paying investment. In the states where such deductions are permitted, attempts to obtain immunity from taxation in this way are universal and generally successful. And they are most successful in the case of property which already bears less than its share of the burdens. The great majority of officials cry out against debt-exemption as an utter abomination.[3]

Both methods are thus unendurable. Debt-exemption and no debt-exemption are equally bad. The states shift from one policy to the other in equal despair. We are therefore forced to the conclusion that the whole system is unsound. The fault lies not in the exemption but in the taxation of property. The general property tax under either of these two methods produces crying injustice. As there is no third method possible, the inference is that the injustice is of the essence of the general property tax. The New York commission, indeed, came to the very illogical conclusion that mortgage debts should be deducted from realty, but that there should be no offset for debt in the assessment of personalty.[4] This would be a legal discrimination wholly subversive of the first principles of justice. There is no logical escape from one of the two methods, debt-

[1] A. Walker, Science of Wealth (7th edition), p. 339.

[2] The best statement of the impolicy of double taxation is found in W. Endicott, Jr., The Taxation only of Tangible Things (Boston, 1875). For a late strong plea, see J. P. Quincy, Double Taxation in Massachusetts (1889).

[3] Report of the Commissioners of Assessment and Taxation in Oregon, 1886, p. 9.

[4] First Report, pp. 60–69, 71–79. *Cf.* the sharp criticism in the Massachusetts Tax Commissioners' Report, p. 96.

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taxation or debt-exemption; and under either plan the general property tax stands convicted by the test of experience.

Under a system, indeed, where there is no general property tax but simply a tax on real estate, the question of taxing mortgages assumes a different aspect and must be decided independently. In the United States many writers dilate upon the manifold advantages that would accrue from the exemption of mortgages. The benefits of exemption would be diffused throughout the community, they say. This is a sentimental view. The taxation of mortgages will not produce any material change, because, as experience has shown, the mortgagee will always shift the burden on the mortgagor in the shape of an increased rate of interest to compensate for the tax. Even were this not the case, the theory of the property tax cannot possibly permit a man whose wealth consists in mortgages to go scot-free. His ability remains the same, whether his property consists in mortgages or in other income-bearing investments. Exemption of mortgages is illogical and unjust. On the other hand, the rational theory of the property tax demands, as we have seen, the exemption of the mortgage debt, *i.e.* of the mortgagor. His ability is really reduced by the amount of the mortgage. The profits of his land go to pay the interest on his debt. To tax both lender and borrower is indeed double taxation. But the remedy consists in exempting not the lender, as our states sometimes do, but the borrower; not the credit of the mortgagee but the liability of the mortgagor. Tax the mortgagee on the amount of the mortgage and the mortgagor on the value of the property minus the mortgage. That is the only rational system.

The exemption of mortgage debts, however, has engendered so many practical difficulties owing to our interstate complications, that three commonwealths, California, Massachusetts and Oregon,[1] have been led to adopt a new system. The mortgagor there can offset the amount of the mortgage debt. The mortgage, on the other hand, is taxable in the hands of the

[1] California constitution, art. xiii, secs. 4, 5; Massachusetts law of 1883; Oregon law of Oct. 26, 1882 (code, §§ 2730, 2734, 2753).

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mortgagee, but it is treated as realty, not as personalty. That is, it does not follow the *situs* of the mortgagee but is taxed in the locality where the mortgaged property lies. If the tax is paid by the mortgagor, he may recoup it from the mortgagee. In Massachusetts, indeed, this provision is practically void, because nearly all mortgages contain a clause requiring the mortgagor to pay taxes upon the mortgaged estate, and a further agreement to pay all taxes upon the debt in the event of the repeal of the law. The practical result is that the lender, not the borrower, reaps the benefit. The mortgagor bears more than his share, for the rate of interest has not fallen to an amount equal to the tax, — and the mortgagee goes scot-free. The Massachusetts system, notwithstanding the fact that it is much lauded by the moneyed interests,[1] is hence practically unjust. In California, however, all such agreements between mortgagor and mortgagee are void. The California system in so far satisfies the requirements of justice. The state is not defrauded of its income from the land, as would be the case if both mortgagor and mortgagee were exempt and as generally is the case even where only the mortgagor is exempt. The burdens are justly shared by those who are logically if not legally co-proprietors of the soil. But this system, I repeat, which regards the mortgage as realty and taxes the legal owner of the land only on the surplus above the mortgage, — this California system is defensible only on the assumption that there is simply a tax on real estate. As soon as we have the general property tax, the exemption must logically be accorded to all debts. And we are then immediately confronted by the dilemma discussed above.

If we sum up all these inherent defects, it will be no exaggeration to say that the general property tax in the United States is a dismal failure. No language can be stronger than that found in the reports of the officials charged with the duty

[1] *Cf.* the report of the Special Committee of the Boston Executive Business Association on Taxation (1889), which calls it a "grand stride toward wise and just taxation[!]" p. 31.

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of assessing and collecting the tax. Whole pages might be filled with such testimony from the various states. I give only the following extracts from the New York reports, as samples:

A more unequal, unjust and partial system for taxation could not well be devised.[1]

The defects of our system are too glaring and operate too oppressively to be longer tolerated.[2]

The burdens are so heavy and the inequalities so gross as almost to paralyze and dishearten the people.[3]

The absolute inefficiency of the old and rickety statutes passed in a bygone generation [is patent to all].[4]

The hope of obtaining satisfactory results from the present broken, shattered, leaky laws is vain.[5]

The system is a farce, sham, humbug.[6]

The present result is a travesty upon our taxing system, which aims to be equal and just.[7]

[The general property tax is] a reproach to the state, an outrage upon the people, a disgrace to the civilization of the nineteenth century, and worthy only of an age of mental and moral darkness and degradation, when the "only equal rights were those of the equal robber." [8]

After such self-criticism nothing more need be said. In comparison with this, the view of the European scientists is moderate, that "a cruder instrumentality of taxation has rarely been devised." [9] And yet, notwithstanding all this criticism, our methods limp along almost unchanged.

II. *The Development of Taxation.*

In all primitive societies voluntary offerings constitute the first form of common contributions. It is out of the question to levy any direct tax. Every man feels the necessity of upholding the political and military organization by his own personal

[1] First Annual Report of the State Assessors, 1860, p. 12.
[2] Comptroller's Report, 1859.
[3] Assessors' Report, 1873, p. 3.
[4] Assessors' Report, 1877, p. 5.
[5] Report of Commissioners of Taxes and Assessments, 1876, p. 52.
[6] Assessors' Report, 1879, p. 23.
[7] Comptroller's Report, 1889, p. 34.
[8] Assessors' Report, 1879, p. 7.
[9] Leroy-Beaulieu, Science des Finances (3me éd.) III, 498: "Rarement, dans la fiscalité moderne, on a inventé d'instrument plus grossier."

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efforts, but only by these. As society advances and interests diverge, the moral obligation becomes a legal obligation; the voluntary offerings become compulsory contributions. We may sum them up as *trinoda necessitas*, liability to military service, watch and ward, *etc.*; all of them primitive obligations which might occasionally be bought off under the name of poll or capitation tax. The first forced contribution of the individual to the maintenance of the common welfare is always seen in this rude attempt to assess every one according to his ability to bear the common burden, that is, according to his faculty. This faculty is seen in the enforced participation in the administration. But nowhere yet is there any idea of the direct taxation of property. The contribution is personal. The individual's faculty is found in his person, not in his property, because there is practically no property. And the contributions are, for the most part, not regular but spasmodic.

The next stage brings us to the development of indirect taxation. This becomes possible only when property has somewhat increased and the interchange of commodities takes place on a larger scale. The revenues on which the government has hitherto depended — domains, tributes, lucrative prerogatives and fees — are now plainly inadequate. It becomes necessary for the monarch to supplement these by taxing property. But a direct property tax is still out of the question. Public opinion will not yet admit its necessity. The government must endeavor to effect its object covertly. It must go to work in a roundabout way, and hide the taxes in a variety of disguises. Many of them will be declared to be simple returns for government services. But before long the monarch feels able to throw off all disguises and limits the amount of his exactions only by the degree of his rapacity. Thus the fees and tolls change into taxes on exchange and transportation; thus the customs, the "evil duties" and the excises grow apace. Thus the taxes become not only imposts but impositions. This explains why it is so difficult for the idea of direct taxation to force its way into popular recognition. The first manifestations of the tax power are generally merciless and brutal. They are apt to react on the

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public consciousness and to stunt the growth of any feeling of obligation. It is not until public morality has so far developed as to introduce more lenient and more refined processes of indirect taxation that we discover a growing willingness on the part of the individual to pay direct property taxes. When this stage — possible often only after centuries of laborious and continued exertion — has finally been reached, we enter upon an entirely new phase in the history of finance. The readiness to share in the public burdens out of one's property presupposes a far higher social ethics and a far more complex society than was possible in the simple conditions when every one was willing to take part in the defence of the village or the repair of the roads. Interests have now become specialized. It needs a far greater sense of civic obligation to submit cheerfully to direct property taxation than was necessary in primitive times for the putting forth of mere personal exertions. Even to-day the full import of this obligation is only inadequately grasped. Until within a few years it was deemed necessary to base the theoretical justification of taxation on fanciful doctrines of contract, of protection, and the like. And even at the present time, those who cheerfully seek to contribute their share to the common burden form the exception, not the rule. But even the imperfect recognition of this duty implies a highly developed political consciousness. The method of taxing every one according to his property is the first rough attempt of a property-owning community (as over against a primitive community) to assess each member according to his relative ability. The introduction of the property tax is a vast step forward in the development of social ethics.

These first property taxes are entirely in harmony with the facts of early industrial life. It is a matter of common knowledge that the early period of every civilization is marked by two chief facts; the almost exclusive preponderance of agriculture and the existence of slavery. As Rodbertus has pointed out,[1] this leads to a fundamental distinction between ancient and

[1] Untersuchungen auf dem Gebiete der Nationalökonomie des klassischen Alterthums, in Hildebrand's *Jahrbücher*, IV, 343 *et seq.*

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modern economic theories. In modern civilization we have not only a quantitative division in wealth but also a qualitative difference. That is, not only are there rich and poor, but there are landowners, capitalists, employers, laborers, *etc.* In early civilization there was a quantitative but no qualitative distinction in wealth. All property consisted simply in land and the landowner's household, including slaves and beasts of burden. There was no important capital apart from this landed property, and hence there were no distinct shares in distribution. But Rodbertus errs in confining to Greece and designating by the Greek name an economic system which is characteristic of all early civilizations. It was as true of the slave-holding states in the Union, and of the mediæval manorial system, as it was of the Hellenic civilization. Wherever we find only agriculture and slavery, there we have this inseparable mass of collective property, not yet split up into its constituent parts.

The importance of this for finance lies here: since we have only this general collective property, and since this property consists practically of land and the means to till the land, the direct property tax must take the shape either of the land tax or of the general property tax. These are practically tantamount to each other. For the produce of two given portions of land will vary about in proportion to the value of the land together with the amount of slaves and cattle necessary to till it. Everywhere at first, therefore, the direct property tax is found to be either the land tax (usually the tithe) or the general property tax. The general property tax or its equivalent is well suited to the facts of the time. It is the only practicable and the only just form of taxation at this early period.

But now comes a change in the forms of economic life, — a change that inevitably produces an effect on the public conscience and the accepted ideas of justice. In the first place, with increasing prosperity we find a slow growth of the simpler kinds of personal property. The landowner's family will gradually accumulate money, clothing and luxuries. If the general property tax is still to continue a fair evidence of individual ability to pay, personal property must be taken up into the

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assessment lists. And this in fact everywhere occurs. Not only the real estate, but also the growing personal estate is now regarded. At first this personalty will consist of tangible, visible objects not easily concealed, and constituting a fair index of the citizen's prosperity. The existence of this scanty stock of personalty will, however, still be in harmony with the early economic system. It is still the landowner who owns the personal property, and it is still fitting that there should be only the general property tax. The economic system has not materially changed.

The next change, however, inaugurates a widely divergent stage. The primitive family group or manorial system decays. Slavery is gradually broken down by manumission or abolition. The commercial instinct grows stronger, and trade is no longer limited to the interchange of superfluities between adjacent households. What Aristotle decries as the gainful pursuits become common occupations. Capital develops and free laborers appear. The original undifferentiated mass of property splits up into separate parts. The landlord is no longer the property lord. Personal property, in the shape both of productive capital and unproductive wealth, increases at a continually accelerating ratio. Finally, as in our modern industrial system, the movables far outrank the immovables. Realty is completely overshadowed by personalty, both in extent and influence.

The monarch, or public opinion as reflected in the government, now seeks to conform the practice of taxation to this change in economic facts. The general property tax continues, but the assessor tries to make the tax equable by including not only the realty, but also all these new forms of personalty, whether corporeal or incorporeal. Or, in those cases where the original tax was the land tax, it is now supplemented by other taxes, or expanded into a general property tax. The attempt is intelligible and even laudable; for it is simply the manifestation of the ideas of equality and universality of taxation. Personal property must not escape; *ergo*, it must be included in the designation of general property and taxed equally with the real property.

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The attempt is laudable, but it is futile. Personalty will evade the most inquisitorial assessor. Wherever tried, the general property tax again resolves itself into the real property tax. History shows us that this has always been the case. The more complex the industrial development, the more inevitably does this process take place, the more surely does the general property tax virtually revert to its primitive form of real property tax. Not alone history, but theory shows us that this must be so. For the general property tax, as we have seen, originated with and is calculated for an economic system where the only property is the collective, indivisible property, where the landowner and capitalist are one. There is one kind of property, and therefore one kind of property tax. But as soon as property is split up into different parts, as soon as there are various kinds of property, just so soon does the single property tax become antiquated and useless. It is not only useless, but it is now absolutely iniquitous. For the attempt to include under one head the gains flowing from widely different pursuits, — pursuits whose number and divergence are limited only by the well-nigh boundless variety of individual capacity, — this attempt to reduce the multiform to the uniform can end only in the virtual exemption of the new forms and a consequent over-burdening of the old. What has been conceived in the spirit of justice develops into an embodiment of injustice. What has been in its origin an attempt to attain equality results in gross inequality.

Because of the evident impracticability of the general property tax, governments now begin to fit their theories of taxation to the economic facts. They abandon the attempt to make the new facts conform to the old theories. As various forms of personalty gradually set themselves free from taxation, the state reasserts the principle of equality. But it now recognizes the existing facts and abandons the fiction of the general collective property. As property splits up into its various elements new taxes are laid, one by one, not on the property but on the separate sources of this new wealth. The old land tax may be retained, but new taxes are imposed in various forms.

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Taxes on vocations, on professions, on trade, on commerce, on profits, on interest, on wages and salaries, *etc.*, *etc.*, follow in quick succession, until finally the theories and practice of taxation actually conform to the facts of industrial life. One by one these various sources of wealth drop off from the antiquated general property tax only to receive a new life in these fresh forms. The feeling of equity in the public consciousness can not be put down. What escapes under one form it attempts to reach under another. The theories of taxation cannot long lag behind the facts of industrial life.

III. *History of the Property Tax.*[1]

In antiquity, direct taxation was treated not as a regular, but as an extraordinary source of revenue. The Athenian direct tax (εἰσφορά) as levied in the the time of Solon (B.C. 596) was nominally a classified property tax, but in reality a land tax.[2] With the increase of wealth an attempt was soon made to reach personalty; but the success is entirely conjectural. We simply know that under Nausinicus (B.C. 380) the bases of taxation were not only land and houses, but also slaves, cattle, furniture and money. But it is more than probable that the tax had by this time become a progressive income tax.[3] At all events there is no proof at all that the tax on intangible personal property as such was at all successful.

In Rome the direct tax (*tributum civium*), which was not so much a tax as a compulsory loan to be repaid out of the proceeds of conquest, was levied only to meet extraordinary expenses for which the proceeds of domains (the *vectigalia*) did not suffice. As Rome was at first an agricultural community, the real quiritarian property, alone recognized by law, consisted

[1] The only attempt thus far made to discuss this subject is that of Parieu, Histoire des impôts généraux sur la propriété et le revenu (1856). But this is inexact, inadequate, confused and antiquated.

[2] Boeckh, Public Economy of the Athenians, book iv, chapter 5.

[3] This explanation of Rodbertus, in Hildebrand's *Jahrbücher*, VIII, 453 *et seq.*, is far preferable to the very involved interpretation of Boeckh (p. 669 of the American edition).

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solely of land and the capital affixed to land, like houses, slaves and cattle. These were the *res mancipi*.[1] But the property tax was assessed only on the land, on the assumption that every acre of land would require a definite quantity of this productive capital.[2] The early Roman property tax therefore was in effect a tax on realty, analogous to the early εἰσφορά.[3] With the development of trade and industry in the later days of the republic, the character of property underwent a change. The amount of personalty increased. If the *tributum* was to remain a general property tax it would be necessary to assess also these new forms of property. And in truth the attempt was now made. Not only farming implements, but ships, carriages, money, garments, ornaments, *etc.*, were listed.[4] But it must be remembered that the only personalty assessed still consisted of visible, tangible objects, although the censors had practically unlimited power to take up any property into the tax-list (*census*). There is absolutely no evidence to prove that trading capital proper was ever taxed.[5] And it is useless to speculate what might have been the result during the last period of the republic; for further progress in this direction was checked by the fact that, with one isolated exception, the republic levied no direct property tax at all on the Roman citizens after 167 B.C. Whether the *tributum civium* was again levied during the empire is a moot question. The weightier arguments seem to be on the side of those who maintain that it was never again made use of in its old form.[6]

[1] Mancipi res sunt praedia in Italico solo, tam rustica, qualis est fundus, quam urbana, qualis domus; item jura praediorum rusticorum, velut via, iter, actus, aquaeductus; item servi et quadrupedes, quae dorso collove domantur, velut boves, muli, equi, asini. Ceterae res nec mancipi sunt. Ulpian 19, 1. *Cf.* Gaius I, 120; II, 15–17.

[2] Marquardt, Römische Staatsverwaltung (2nd ed.), II, 161.

[3] Except that it was not a graduated tax, and was levied on the value not the produce.

[4] Matthias, Römische Grundsteuer und Vectigalrecht (1882), p. 6. The leading ideas of Matthias are translated in Humbert, Essai sur les finances chez les Romains, II, 328 *et seq.*

[5] The only one who maintains the contrary is Walter, Geschichte des römischen Rechts (3d ed.), I, 271. But the passage of Livy to which he refers (VI, 27) does not bear out his assertion. Walter stands quite alone.

[6] Rodbertus, Hildebrand's *Jahrbücher*, IV, 408–427, and Hegewisch, Römische

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In the provinces the property tax was nothing but a land tax; either a tax on the value (*tributum soli*), or a tithe (*decuma*), or a ground rent (*vectigal certum* or *stipendium*). In addition to the land tax proper we find the poll tax (*tributum capitis*). In some of the older provinces, where the remains of an enterprising commercial life still existed, this tax probably included the customary imposts, whether a tax on classes or professions or a nominal general property tax.[1]

The Roman property tax was therefore virtually a tax on land and the little productive capital affixed to land. Personalty, so far as it was assessed at all, consisted of the meagre tangible objects owned by an agricultural people. The Romans had a general property tax because, as in Greece, there was only one kind of property — the collective property owned by a slave-holding population.

Under the empire industrial society began to differentiate. Caligula (A.D. 37–41) took advantage of this to levy taxes on special classes, above all on carriers, prostitutes and pimps.[2] Trading capital, everywhere the first element to separate itself from the collective mass of property, was reached for the first time by Vespasian (69–79) in the curious tax on the private owners of city urinals and closets.[3] Finally, shortly before Caracalla (211–217) we find a general tax on commercial capital, known henceforth as *aurum negotiatorium*. But what a

Finanzen, p. 1346, maintain its existence. But Savigny, Vermischte Schriften, II, 151, 185; Huschke, Ueber den Census zur Zeit Christi, pp. 70, 190; Mommsen, Römische Geschichte, II, 387; and Marquardt, Römische Staatsverwaltung, II, 171, take the opposite view. Dureau de la Malle, in his Economie politique des Romains, does not touch this point. The decisive quotation is that from Tacitus, Annales, 13, 51, of which Rodbertus' interpretation is strained. The best argument — which has not hitherto been advanced — seems to me to be this: that if the *tributum civile* had continued, it would not have been necessary for Diocletian to introduce into Italy the *tributum provinciale*.

[1] Rodbertus, IV, 364, puts it too strongly when he says that it was only a poll tax. See Marquardt, II, 195.

[2] Suetonius, Caligula, 40: "Ex gerulorum diurnis quaestibus pars octava, ex capturis prostitutarum quantum quaeque uno concubitu mereret." *Cf.* Dio Cassius, LIX, 28.

[3] Known as *foricarii*. Suetonius, Vespasian, 16, 23. *Cf.* for other authorities Walter, Rechtsgeschichte, I, 498.

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singular commentary it is on the progress of civilization that the first tax on circulating capital should be on a rather filthy occupation, and the first tax on industry one on prostitutes.[1] Caracalla, we are told, conferred the privilege of Roman citizenship upon all the inhabitants of the empire in order to extend to them the now numerous direct taxes, especially the succession and manumission tax.[2] The provincial land tax continued. But it went through the same evolution as formerly the civic direct tax. It became a general property tax. The industrial development, however, had outrun the fiscal theories. It became more and more difficult to reach personalty. More and more barbarous methods were introduced;[3] until finally, as Lactantius tells us in stirring language, torture was applied to the recalcitrant owner.[4] Under Diocletian (284–305) the provincial land tax (known henceforth as *jugatio* or *capitatio terrena*) was introduced into Italy. But at the time of the Theodosian code and the completion of the late fiscal system, we find, not the general property tax,[5] but a vast variety of taxes, indirect and direct. Chief among the latter were those on the profits of trades, professions and artisans,[6] now consolidated into corporations through the petrifaction of industrial relations.[7] But the attempt to tax personal property by means of a general property tax was abandoned because the original mass of property had disintegrated. The primitive system was

[1] Hildebrand's *Jahrbücher*, V. 315.

[2] At least this is the uncharitable construction put on the act by Dio Cassius.

[3] The municipal decurions, for example, were made personally liable for the taxes levied on their municipalities. Service as decurion became compulsory and hereditary. Fugitive decurions were brought back, like fugitive serfs or military deserters.

[4] De morte pers. 23: Fora omnia gregibus familiarium referta; unusquisque cum liberis, cum servis aderat; tormenta ac verbera personabant; filii adversus parentes suspendebantur; fidelissimi quique servi contra dominos vexabantur, uxores adversus maritos. Si omnia defecerunt, ipsi contra se torquebantur, et quum dolor vicerat, adscribebantur quae non habebantur.

[5] The poll tax (*capitatio plebeia* or *humana*) levied on the serfs (*coloni*) was practically a property tax because it was paid by the landowner.

[6] Known as *chrysargyrum*, *vectigal artium*, *pensio auraria* and *aurum lustrale*. *Cf.* Levasseur, Histoire des classes ouvrières en France, I, 72–78.

[7] *Cf.* Wm. Adams Brown, State Control of Industry in the Fourth Century, POLITICAL SCIENCE QUARTERLY, II, 1 (September, 1887), pp. 494–513.

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abolished and was replaced by methods more or less analogous to modern European practice.

During the middle ages the same development can be noticed. In the early period, after the disruption of the Roman empire, there were no taxes at all. The primitive Teutonic idea forced its way through in the feudal system. The contributions originally devoted to public purposes became the private possessions of feudal nobles and over-lords. The public tax became private property.[1]

In the early feudal system land was practically the only form of wealth, just as it was the basis of the political fabric. In England the feudal payments (*scutages*, *carucages*, and *tallages*) gradually became land taxes, just as the Saxon *shipgeld* and *danegeld* were land taxes. But from the twelfth and thirteenth centuries onward, the growth of industry and commerce in the towns led to an increase of personalty or movables. It became necessary to devise some new method of reaching the ability of the citizens. The only way out of the difficulty in England, as on the whole continent, was a combination of the taxes on lands and movables through the general property tax.

The mediæval towns were the birthplace of modern taxation. Every inhabitant was compelled to bear his share of the local burdens, his proportion of the scot and the lot. The scot or tax was almost from the very outset the general property tax combined with the subordinate poll tax, exactly as in the earliest days of the New England colonies. The town, as such, generally paid its share of the national burdens in a lump sum, the *firma burgi*. But this lump sum was always distributed among the townsmen in proportion to the property of each.[2] On the

[1] *Cf.* for details Clamageran, Histoire de l'impôt en France, I, 115; and Vuitry, Études sur le régime financier de la France avant la révolution, I, 420.

[2] Numerous examples may be found in Madox, Firma Burgi, 281 *et seq.* In one town, under Edward III, each man is "taxandus et assidendus juxta quantitatem bonorum et catallorum suorum ibidem." In another town the tax "debet assideri proportionaliter juxta quantitatem bonorum suorum," *etc.* For London, where each freeman paid the general property tax as *partem de bonis suis* or *partem catallorum*, see the examples in Munimenta Gildhallae Londoniensis, Liber Albus I, 592 *et seq.* For full details as to the method of assessment *tempore* Edward II, see Liber Custumarum, 193 *et seq.*, 568 *et seq.*

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continent it was the same. In the German towns the taxes were at first levied only on land. But at the close of the twelfth century, the land tax had already been merged into the general property tax — or, as it was called, the tax on property *in possessionibus, agris, domibus, censibus et rebus quibuscunque.*[1] In other towns it was called simply a tax of so much *per posse* or *pro bonorum facultate.*[2] In most of the German towns also the general property tax was combined with the poll tax.[3] And in the Swiss cantons the tax was even called the *Hab-, Gut-, und Kopfsteuer.*[4] The only distinction between England and the continent was that in England the property tax remained for centuries the sole local tax, while in France and Germany we find in addition the local excises or *octrois.* But for a long time the general property tax was the measure of the individual's capacity.

The general state taxes followed in the wake of the municipal taxes. Already in 1166 a tax on movables was levied throughout almost all Europe for the purposes of the first crusade.[5] But the first real general property tax, into which all the older contributions from the land soon merged, was the Saladin tithe of 1188 on the occasion of the second crusade. In England from this time on the grants of rents and movables (*de redditibus et mobilibus*, or, as they were sometimes called, *de redditibus et catallis*) became more and more common until they finally superseded the older methods of securing revenue. The fractional parts of the property granted varied from a fortieth (1201) to a fourth (1193). But from 1290 it became customary to tax the nobility and clergy only two-thirds as much as the commons. In 1334 the proportion was fixed as the fifteenth and the tenth. This meant a higher nominal rate for movables

[1] Zeumer, Die deutschen Städtesteuern . . . im XII. und XIII. Jahrhundert, pp. 86–89.

[2] Christian Meyer, Augsburger Stadtbuch, pp. 75, 313.

[3] Schönberg, Finanzverhältnisse der Stadt Basel im XIV. und XV. Jahrhundert, S. 134.

[4] Blumer, Staats- und Rechtsgeschichte der schweizerischen Democratien, II, 295 *et seq.*

[5] Sinclair, History of the Public Revenue, I, 88.

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than for land. But in reality there was a substantial equality of taxation, because the assessment of chattels was not strictly enforced. This is apparent from the dissatisfaction shown with the tax of 1275, when the people were assessed *ad unguem, i.e.* up to the full value of their movables.[1] In the succeeding grants the old easy practice was resumed. As the tax on lands, however, could be levied on actual rents, it was not apt to be so leniently assessed. Thus a substantial equality was probably reached.

Just as the tallages merged into the fifteenths and tenths in England, so in France the feudal charges on the land developed into the general property tax, which however still retained the old name *taille*. The ordinances of 1254–56 attempted to regulate the assessment, and provided that movables should be charged only half as much as immovables.[2] France thus endeavored to attain by law what England effected by custom. During the fourteenth century the *taille* came to be the chief direct tax, and in 1439 it was made a permanent annual tax. In Germany also the imperial and state direct taxes, in so far as there were any, took the form of the general property tax. The *Bede*,[3] the *gemeiner Pfennig*,[4] the *Landschoss*,[5] the *Landsteuer*,[6] *etc.*, all followed the example of the local property tax.

In the Italian republics the commonwealth was at first supported by the general property tax. In Milan, under the name *stima e catastro de beni*, it is found as early as 1208, and afterwards was levied with such severity that the assessment book was known as the *libro del dolore*.[7] In Genoa it was called

[1] Dowell, History of Taxation and Taxes in England (2d ed.), I, 68.

[2] Clamageran, Histoire de l'impôt en France, I, 264.

[3] At first a feudal land payment; Hüllmann, Deutsche Finanzgeschichte des Mittelalters, p. 133.

[4] Lang, Historische Entwickelung der teutschen Steuerverfassungen seit der Karolinger, p. 182.

[5] Schmoller, Die Epochen der preussischen Finanzpolitik, in *Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft*, I, 35, 42.

[6] Hoffmann, Geschichte der direkten Steuern in Baiern vom Ende des XIII. Jahrhunderts, pp. 11, 17, 39.

[7] Carli, Relazione del censimento dello stato di Milano, in Custodi's Scrittori classici italiani, parte moderna, XIV, 184, 185.

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colletta.[1] In Florence it was known as *estimo* and played an important role in politics.[2] And finally we find in the Netherlands from the earliest times the general property tax known as the *schot* or the tenth, *etc.*, on *bezittungen* (possessions)[3] — a tax of especial interest because it served as the model of the general property tax in the New Netherlands.

The general property tax thus existed throughout all Europe. It was moderately successful because well suited to the period. Although involving an inquisitorial search into every article of the scanty mediæval stock, as can readily be seen from the detailed schedules of assessment still in existence, the tax was levied chiefly on tangible, physical objects not capable of easy concealment. With the exception of countries like France, where the tax was emasculated by the system of exemptions, it resulted on the whole, during this early period of society, in a tax fairly proportional to the individual faculty. There was a general property tax because there was a very slight differentiation of property.

Before long a change set in. In England the fifteenths and tenths changed from a percentage to an apportioned tax. Every locality had to raise a definite lump sum. But the old methods of assessment fell into disuse. Each town and county made its own arrangements and treated personal property with such leniency that the total product of the tenth and the fifteenth continually decreased. The consequence was an attempt on the part of the crown to supplement the old tax by a new general property tax, called the subsidy. The early efforts met with failure. Finally, in 1514, the first general subsidy was granted, as a tax of sixpence in every pound of property. The pound rate was afterwards fixed at four shillings on lands, and two shillings eight pence on goods. But the subsidy went through precisely the same development as the fifteenth and the tenth.

[1] "Le imposte straordinarie si possono di questa epoca [1252] comprendere in una sola, la colletta." Canale, Storia dei Genovesi, I, 318 (edition of 1844).

[2] Villani tells us that it was levied on "cio che chiascuno havea di stabile e di mobile e di guadagno." Istorie fiorentine fino al anno 1348, book x, chap. 17 (vol. vi, p. 26 of Milan edition of 1803).

[3] Engels, De Geschiedenis der Belastingen in Nederland, pp. 60–65.

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At first really a percentage tax, it was soon practically converted into an apportioned tax of a stated lump sum. No assessment of the districts took place, but every locality was supposed to pay the same sum year after year. All the growing wealth thus entirely slipped out of the lists. Exemption after exemption was made, and personal property was so loosely assessed that the total yield continually declined. The most arbitrary methods were employed. Only the old "subsidy-men" were taxed; allowances were made in a multitude of cases; and the assessments of personalty were so low and partial that the subsidy became a perfect farce. As Bacon said, "the Englishman is master of his own valuation."[1] Sir Robert Cecil stated in 1592 that there were not five men in London assessed on their goods at £200; and Sir Walter Raleigh stated in 1601 that "the poor man pays as much as the rich."[2] Although nominally a general property tax, the subsidy thus came to be levied chiefly on the land, and became an unequal land tax; so unequal that it finally disappeared in 1663.

Under the Commonwealth an attempt was made to revive the general property tax, under the name of commonwealth monthly assessments.[3] The improvement was so marked that the old subsidies were completely abandoned and replaced by the assessments. But the reform was short-lived and the assessments of personal property continually diminished. Sir William Petty, after complaining of this, nevertheless held, as do some of our rural legislators to-day, that "assessments upon personal estates, if given in as elsewhere upon oath, would bring that branch which of itself is most dark to a sufficient clearness."[4] After the Revolution the tax was levied as the so-called property tax. By its terms[5] it was assessed on the persons possessed of personal property, real estate or public offices or positions of profit.

[1] And, he adds, "the least bitten in purse of any nation in Europe."

[2] Report on Public Income and Expenditure, 1869, II, 415.

[3] Tayler, The History of the Taxation of England, p. 21.

[4] Petty, Verbum Sapienti; or . . . the method of raising taxes in the most equal manner, p. 17. (Appended to the Political Anatomy of Ireland, edition of 1691.)

[5] 4 William III, cap. 1.

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And it was at first a percentage tax. But the yield decreased so enormously that Parliament in 1697 fixed the sum a rate should produce, *i.e.* it became an apportioned tax of stated amount. Moreover, the difficulty of assessing personalty and the impossibility of reaching intangible property were now so apparent that the tax became almost exclusively a land tax. The name itself was first applied in 1697. The "annual land tax" of England (which since 1798 has become simply a redeemable rent charge on land) was thus intended to be a general property tax and for a long time continued to be so legally.[1] The provision taxing personal property continued to exist on the statute book until 1833, and the clause taxing public offices and positions of profit was not finally repealed until 1867. The year before its repeal it had yielded the enormous sum of £823![2] Such was the ludicrous result of the attempt to maintain mediæval customs. The general property tax, which had started out as a land tax, reverted in name as well as in fact to its earliest form.

In other countries the history of the property tax is identical. In France the *taille* was of two kinds, the *taille réelle* which was levied in name as well as in fact only on lands in the *pays d'état*, and the *taille personnelle*, nominally a general property tax levied in the *pays d'élection*, *i.e.* the greater portion of France. In reality the *taille personnelle* was levied only on the families or households of the non-nobles (*roturiers*), and it practically became a land tax like the *taille réelle*; for the wealthy owners of personalty soon acquired the same privileges as the nobility. Vauban tells us that the *taille* as a tax on movables was assessed only on the poorest classes.[3] Sully, indeed, endeavored in 1660 to restore the principles of the general property tax and to assess

[1] Adam Smith, Wealth of Nations, book v, chap. ii: "By what is called the land tax, it was intended that stock should be taxed in the same proportion as land." (Rogers' ed. II, 553.)

[2] Report of the Commissioners of Inland Revenue, 1867.

[3] "En résumé la taille était un impôt territorial qui n'atteignait que les propriétaires les plus pauvres du royaume, et une taxe mobilière qui portait exclusivement sur les classes les moins riches de la société." Dîme Royale, p. 32 of Daire's edition.

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personalty as well as realty.[1] But he failed ignobly; for, at the close of the seventeenth century, the great work of Boisguillebert is full of bitter complaint and lamentation.[2] And when the attempt was made in the eighteenth century to supplement the *taille* by the *dixièmes* and *vingtièmes*, like the tenths or fifteenths of old in England, the new tax again became practically a land tax.[3] The development was inevitable, and it resulted in the total abolition of the general property taxes during the Revolution.

In Germany, the mediæval assessment lists to be filled out by the taxpayer bear a striking resemblance to those still used in some of the American commonwealths.[4] But there, as here, it became continually more difficult to reach personal property. In Prussia (Brandenburg) this was true already at an early period.[5] In Bavaria as well as in Austria the nobility and the richer commercial class succeeded at the end of the sixteenth century in shoving the main burdens on the shoulders of the rural population.[6] And in the other German states the equal property tax remained so only in name.[7] In Switzerland, indeed, the property tax, like so many other mediæval customs, has been in part retained to this day. But its nature has been materially changed, in that it has become a progressive tax and that an attempt has

[1] Sully ordered the officials to assess contributors "à raison de leurs facultés, quelque part qu'elles soient, meubles ou immeubles, héritages nobles ou roturiers, trafic et industrie." *Cf.* Clamageran, Histoire de l'impôt, II, 359.

[2] "Il n'y a pas le tiers de la France qui y contribue, n'y ayant que les plus faibles, et les plus misérables; en sorte qu'elles les ruinent absolument." Le Détail de la France, chap. iii.

[3] "Dans la pratique, l'élément foncier prédominait presque exclusivement." Stourm, Les finances de l'ancien régime et de la révolution, I, 240. See also Necker, De l'administration des finances de la France, I, 159. The account given by Adam Smith, Wealth of Nations, book v, chap. ii, is not perfectly exact.

[4] For a typical list of 1531, see Bielfeld, Geschichte des magdeburgischen Steuerwesens von der Reformationszeit, pp. 19–23.

[5] Schmoller, Die Epochen der preussischen Finanzpolitik, pp. 42, 49. *Cf.* Schmoller, Studien über die wirthschaftliche Politik Friedrichs des Grossen, in his *Jahrbücher*, VIII, 38, for Brandenburg; VIII, 1011, X, 330 and X, 350 for Magdeburg.

[6] Hoffmann, Geschichte der directen Steuern in Baiern, p. 70.

[7] Wagner, Finanzwissenschaft, III, 62, 77, 80.

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been made to remedy its defects by joining to it an income tax. Even thus much hardship and inequality ensue.[1]

In Italy the development of the property tax can be clearly studied in Florentine history. The *estimo*, at first assessed with comparative equality, soon became honeycombed with abuses. Personalty slipped out of the lists, the rich bankers entirely escaped, and the whole load of taxation fell with crushing force on the small owners, *populo minuto*. Hundreds were completely ruined and compelled to seek refuge in exile.[2] The discontent became so loud that after threats of revolution and disorder the *estimo* was finally supplanted in 1427 by the new tax, *catasto*, to be levied on the personalty of traders and bankers as well as on realty. Machiavelli gives us an interesting account of the opposition of the nobles, who were at the same time the great financiers.[3] But the new general property tax went the way of its predecessors. When we read of the subterfuges and evasions, of the strenuous efforts on the part of the state to compel the listing of personalty and of the dismal failure of the attempts, we seem to be reading the reports of American commonwealth assessors or comptrollers for 1889. The history was precisely the same. In 1431 only fifty-two persons paid the tax on trade capital, although the amount of such capital must have been immense. And in 1495 the tax was made in name, what it had long been in fact,[4] a tax on immovables only. Personalty, as such, was henceforth legally exempt. The general property tax had again become a land tax.

Throughout all Europe the local property tax has become a tax on real estate. In England the whole system of local taxation is based on the poor rate, according to the statute of 1601 which mentioned as liable to the tax not only occupiers of lands,

[1] A complete collection of all the cantonal tax laws can be found in Böhmert, Arbeiterverhältnisse und Fabrikeinrichtungen der Schweiz, I, 128–200. *Cf.* also Cohn in POLITICAL SCIENCE QUARTERLY, IV, 1 (March, 1889), p. 50.

[2] *Cf.* Léon Say, Les solutions démocratiques de la question des impôts, I, 209 *et seq.*, especially pp. 222, 229. He gives no references. For a full history, see Baer, Il catasto fiorentino nel secolo XV; *Nuova Antologia*, vol. 17 (1871).

[3] History of Florence, IV, 14 (vol. i, p. 181 of Detmold's translation).

[4] Canestrini, L' imposta sulla richezza mobile ed immobile, I, 108, 115, 321, *etc.*

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houses, *etc.*, but every inhabitant, parson and vicar. The general rule adopted was that all personal property liable must be "local, visible and productive of a profit";[1] so that, even from the first, intangible personalty was shut out. The liability of stock in trade, at first generally disputed, was finally affirmed by Lord Kenyon in 1795. The results were doubly disastrous. For the early success of the experiment led the justices of the peace to begin that most unjust and improvident method of poor relief known as the allowance system. And secondly, the practice of rating stock in trade, which was confined to the old clothing district in the South and West of England, resulted in the rapid decline of the ancient staple trade and a transfer of the business to Yorkshire, where personalty was not assessed. The law of 1840, which is re-enacted yearly, finally exempted all personalty from taxation; but it was powerless to bring the trade back to its old channels. For the last fifty years the local property tax in England has been legally, as well as actually, a tax on productive real estate alone.[2]

History thus everywhere teaches the same lesson. As soon as the idea of direct taxation has forced itself into recognition, it assumes the practical shape of the land tax, soon developed into the general property tax. The general property tax long remains the index of ability to pay. But as soon as the mass of property splits up and differentiates, the property tax becomes an anachronism. The various kinds of personalty inevitably escape, and finally the general property tax completes the circle of its development and reverts to its original form of the real-property tax. The property tax in the United States is precisely identical. It is not an American invention,

[1] Report of the Poor Law Commissioners on Local Taxation, 1843; Accounts and Papers, IX, 18.

[2] Thorold Rogers, Local Taxation, especially in English Cities and Towns, p. 16. *Cf.* also Noble, Local Taxation, p. 58; Palgrave, Local Taxation in Great Britain, p. 78; Goschen, Reports and Speeches on Local Taxation, p. 50; Phillips, Local Taxation in England and Wales, in Probyn's Local Government and Taxation in the United Kingdom, p. 502; and especially Bilinski, Die Gemeindebesteuerung und deren Reform, pp. 35 *et seq.* See also Hedley, Observations on the Incidence of Local Taxation (1884), who opposes the exemption of stock in trade and the recent attempts to get machinery exempted from ratability.

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but a relic of mediævalism. In substance, although not in name, it has gone through every possible phase of its development. Any attempt to escape the shocking evils of the present by making it a general property tax in fact as well as in name is foredoomed to failure. The general property tax is impossible in any complicated social organism. Mediæval methods cannot succeed amid modern facts.

IV. *Theory of the Property Tax.*

While it is generally confessed that the property tax in the United States is a failure, it is sometimes contended that if thoroughly executed it would be a just tax. The theory of the general property tax, as set forth in almost all our state constitutions, is held to be correct in principle. Is this true?

In the first place we must disabuse ourselves of the idea that property, as such, owes any duty to pay taxes. The state has direct relations not with property, but with persons. It is the individual who, from the very fact of his existence within the state, is under definite obligations towards the state, of which the very first is to protect and support the state. For the state indeed can exist without the particular individual, but the individual cannot exist without the state. The individual must support the state, not because the state protects him, but because his life is possible only within the state — unless indeed he prefer stateless savagery. Every civilized community professes to tax the individual according to his faculty, his ability to pay. His ability may indeed be measured by his property or by any other standard. But in the last instance it is the individual who is taxable. It is he who owes the duty.

But is property the true test of ability? In primitive communities to a certain extent it is. Every freeman is a proprietor. All are supported by the produce of the land. The comparative equality of wealth gives a comparative equality of opportunity. The finer differences in ability to pay are not yet recognized. In the early stage of society property is indeed a rough test of ability.

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But a change soon sets in. As society differentiates, classes arise who support themselves not from their property, but from their earnings. Manifestly he who earns a salary cannot be declared entirely devoid of ability to pay, as compared with one who receives the same amount as interest on a principal, or as profits on property. Moreover the productiveness of property becomes a controlling element in calculating the owner's ability. Of two factory owners, one may be running full time and making large profits; the other may be compelled to keep his factory closed, earning nothing. Of two landowners, one may employ improved processes and enjoy a large product; the other, although on equally valuable land, may suffer climatic reverses and produce far less. Of two capitalists, one may invest his property so as to obtain large proceeds; the other may put an equal amount into an enterprise which yields very little. It is plainly incorrect to say that the ability in these cases varies with the property. The test of ability is shifted from property to product, proceeds or earnings.

The truth of this principle is faintly recognized in the legislation of all countries one step removed from the primitive tax system. It can be seen in some of the mediæval town taxes, where the earnings of the artisans and tradesmen were taxable, as evidences of ability or faculty, side by side with the taxation of property owners. It can be seen in various attempts of mediæval states to tax the proceeds or rents of land, the salaries of officials and the product of individual exertion. In like manner it can be seen in the early legislation of the American colonies. The tax law of 1634 in Massachusetts Bay provided for the assessment of each man "according to his estate and with consideration of all other his abilityes whatsoever."[1] But the measure of ability still was property, as appears from the provision of 1635 that "all men shall be rated for their whole abilitie, *wheresoever it lies*."[2] By 1646, however, the glimmering of the new idea is seen; for the law now provides not only for rating of all "estates, both real and personal" but also for

[1] Colonial Records of Massachusetts Bay (Shurtleff's ed., 1853), I, 120.
[2] *Ibid.* I, 166.

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the taxation of "laborers, artificers and handicraftsmen"; and goes on to say:

> And for all such persons as by the advantage of their arts and trades are more enabled to help bear the publick charge than common labourers and workmen, as butchers, bakers, brewers, victualers, smiths, carpenters, taylors, shoemakers, joiners, barbers, millers and masons, with all other manual persons and artists, such are to be rated for returns and gains proportionable unto other men for the produce of their estates.[1]

In other words, not only property but product was taken into account. So in Plymouth colony it was provided "that all persons bee rated according to their goods, faculties and personall abillities," the "vizible estate at a fixed valuation, but faculties and personall abilities at will and doome."[2] In Connecticut and Rhode Island the law was precisely the same and the tax was known as the "assessment on the faculty."[3] The profits of certain classes were taxable like the produce of estates. We see therefore how wide of the mark is the recent statement that the system which the Americans instinctively adopted was "the equal taxation of property, the non-taxation of labor."

In the colonies indeed these laws mark only the first faint attempts to substitute product for property as the basis of taxation. Later on the distinction was lost sight of and the attempt abandoned. But in Europe the development continued and the whole tax system changed from property to product. Thus the taxes on land, houses, wages, salaries, interest, profits, *etc.*, gradually supplanted the property tax and formed a more or less complete system based on product. Very recently again the basis of taxation in modern societies has shifted from product to income. But the reasons of this change and the serious limitations on the ractice of the income tax must be

[1] Colonial Records of Massachusetts Bay, II, 173; II, 213; III, 88. *Cf.* Charters and General Laws of Massachusetts Bay (1814), p. 70.

[2] Records of the Colony of New Plymouth (Pulsifer's ed.), IV, 102, law of 1643; VI, 22, court orders of 1689.

[3] Connecticut Colonial Records, I, 559, law of 1650. Rhode Island Colonial Records, II, 510. *Cf.* the law of 1649 in New Haven; Colonial Records of the Colony and Plantations of New Haven, I, 494.

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deferred to another article. The point to be noticed here is that throughout all Europe the mediæval basis of taxation — the mass of property — was utterly abandoned, because it no longer responded to the equities. The property tax is theoretically unjust because property no longer measures the ability to pay; because property was replaced by product as an index to faculty.

This is the reason of the failure of the property tax. It has indeed been contended by some, as *e.g.* by President Walker, that the fatal defect of the property tax consists in its constituting a penalty on savings.[1] This is inadequate. For the same objection would attach to any tax based on income in so far as income exceeds expenditures. An income tax on the surplus is equally a tax on savings. There is no difference in this respect between a property tax and this portion of an income tax. The only logical conclusion from this objection to the property tax is a tax on expense. If we wish to avoid taxing savings, we must tax only expenditure. And yet President Walker correctly opposes the expense tax as the most unjust of all. The property tax is unjust, not because it is a penalty on savings, but because property is no longer a measure of ability.

There is not a single scientist of note who upholds the property tax as the sole or chief direct contribution. Some of the German writers on finance indeed advocate a general property tax, but simply as a very subordinate supplement to all existing direct taxes,[2] and mainly as an adjunct to the income tax in order to tax income from property more than professional or individual earnings. But the German writers overlook the fact that the same result may be attained by making a difference in the rate of the income tax, as in Italy. Above all, the continental countries have fortunately been so long exempt from the property tax that the European writers have given it very little attention, have utterly forgotten its shortcomings, and have failed to analyze its inherent defects.

[1] POLITICAL SCIENCE QUARTERLY, III, 1 (March, 1888), p. 3.

[2] *Cf.* Gustav Cohn, Finanzwissenschaft, § 475: "Neben der Erwerbsbesteuerung bleibt für die Besitzbesteuerung heute nur ein beschränkter Raum übrig."

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One other argument is sometimes advanced in favor of the property tax, *viz.*, that under any other system unproductive property, like jewelry, art collections, unimproved lands, *etc.*, would be exempt. This consideration is of little weight and, at its best, does not justify a general property tax, but a tax on special kinds of property. Entirely apart from the impolicy of taxing art collections, or the impossibility of discovering jewelry, or the utter insignificance of this kind of property when compared with the total national wealth, the argument has one fatal defect. The conversion of capital into unproductive wealth of itself destroys the revenue, which is the only true fund for the payment of taxes. It is undeniable that if the property were productive and if the tax were levied on the product the owner would pay a larger sum. But on the other hand his revenue would be still greater and his annual surplus above the tax would constitute an ever-increasing productive fund. To leave unproductive property free may thus indeed lessen the share of the government, but seems to be nothing but justice to the individual. His renunciation of revenue diminishes *pro tanto* his tax-paying ability. But even granting that the exemption of non-productive property is erroneous in principle in so far as vacant lands and parks are concerned — an error that can be rectified by a tax on all real estate — it is a minute defect when compared with the utter immunity of all profits and earnings derived from personal or professional exertions. If there are any evils arising from the absence of a general property tax, they are infinitesimal when compared to the evils inseparable from its existence.

V. *Conclusion.*

We may now sum up our conclusions, deferring the question of incidence to a future paper. The general property tax as the main source of public revenue is shown to be a failure from the triple standpoint of history, theory and practice.

Historically, the property tax was once well-nigh universal. Far from being an original idea which the Americans instinc-

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tively adopted, it is found in all early societies whose economic conditions were similar to those of the American colonies. It was the first crude attempt to attain a semblance of equity, and it at first responded roughly to the demands of democratic justice. In a community mainly agricultural, the property tax was not unsuited to the social conditions. But as soon as commercial and industrial considerations came to the foreground in national or municipal life, the property tax decayed, became a shadow of its former self and ultimately turned into a tax on real property, while professing to be a tax on all property. The disparity between facts and appearance, between practice and theory, everywhere became so evident and engendered such misery that the property tax was gradually relegated to a subordinate position in the fiscal system and was at last completely abolished. All attempts to stem the current and to prolong the tax by a more stringent administration had no effect but that of injurious reaction on the *morale* of the community. America is to-day the only great nation deaf to the warnings of history. But it is fast nearing the stage when it, too, will have to submit to the inevitable.

Theoretically, we have found that the general property tax is deficient in two respects. First, the theory presupposes that there is an ascertainable general property — a definite surplus of assets over liabilities. In primitive social conditions this is true. There is a composite mass of property, because there is no industrial differentiation. But in the modern age property is split up into a hundred elements. If we attempt to tax each element separately it is often impossible to decide from which category deductions are to be made for indebtedness. An individual, *e.g.*, owes more on his book accounts than is due to him. Granting that he therefore pays no tax on his book accounts, shall he be permitted to deduct this surplus of debt from the value of his real estate? This is manifestly inadmissible. And yet unless this is done he is taxed not on his property but on his surplus of debt; not on his real assets, but on what he owes. The theory of the property tax is not carried out. And it cannot be carried out because the conditions of

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the theory fail. The general mass of property has disappeared, and with it vanishes the foundation of the general property tax.

Secondly, the property tax is faulty because property is no longer a criterion of faculty or tax-paying ability. Two equal masses of property may be unequally productive, and hence unequally affect the margin of income from which the public contributions are paid. The standard of ability has been shifted from property to product. Not the extent but the productivity of wealth constitutes the test. And since revenue is a better index than wealth, the vast class of earnings derived not from property but from exertion is completely and unjustifiably exempted by the taxation of property alone. The theory of the property tax again fails because the conditions of the theory have disappeared.

Practically, the general property tax as actually administered to-day is beyond all peradventure the worst tax known in the civilized world. We shall see in another paper that even the much decried income tax, both in the United States and in Europe, was and is, however defective, infinitely superior in practice. The property tax to-day, because of its attempt to tax intangible as well as tangible things, sins against the cardinal rules of uniformity, of equality and of universality of taxation. It puts a premium on dishonesty and debauches the public conscience. It reduces deception to a system and makes a science of knavery. It presses hardest on those least able to pay. It imposes double taxation on one man and grants entire immunity to the next. In short, the general property tax is so flagrantly inequitable that its retention can be explained only through ignorance or inertia. It is the cause of such crying injustice that its abolition must become the battle cry of every statesman and reformer.[1]

EDWIN R. A. SELIGMAN.

[1] I do not wish to be understood as favoring either the exclusive taxation of real estate or the single tax on land-values. Even as the sole direct taxes, these forms are utterly inadequate, as will be shown in a succeeding essay.

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THE MORTGAGE EVIL.[1]

IT is in some respects fortunate, and in others unfortunate, that nearly all economic questions become involved in politics. That such questions are on this account more generally considered and more carefully studied is apparent, and that they are for the same reason subjected to misrepresentation and fallacious argument is equally certain. Whenever a well-grounded economic proposition is advanced as a political argument, the party against which it militates usually meets it on every possible line of defence, so that the sum of their reasoning acquires a resemblance to the answer in the celebrated kettle case. The common features of the reply are these: 1. The facts alleged do not exist; 2. The condition resulting from the facts is not injurious but beneficial; 3. The injurious results are not due to the acts or principles of the party in power. Not infrequently the three lines of defence are all followed in one article, overwhelming, bewildering or amusing the reader according to his knowledge of the subject and his faculty of logical perception. The extent and economic significance of Western mortgages — particularly farm mortgages — is one of these questions which has become of political importance on account of its connection with the tariff question, and which has already advanced into all three of the stages of controversy mentioned. It is the object of this paper to discuss the extent and effect of mortgage indebtedness in parts of the West and to endeavor to point out some features of it which have hitherto been entirely overlooked or barely noticed.

In the collection of facts the principal sources of information are of necessity the bureaus of statistics that have been in operation in several of the Western states for some years past. One

[1] [*Cf.* article on Farm Mortgages in POLITICAL SCIENCE QUARTERLY IV, 3 (September, 1889), p. 433. EDS.]

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of the first acts of the Indiana bureau after its organization in 1879 was to request of the county officials statements of the numbers and amounts of mortgages recorded and satisfied in each year from 1872 to date. The returns were not full. Twenty-nine of the ninety-two counties responded in time for the first annual report. In the following year nine more counties were heard from, and the next report included them. The figures are as follows for private real-estate mortgages, exclusive of school-fund mortgages in which the mortgagee is the state:

TABLE I.

Year ending	Record of 29 counties. (Report of 1879, p. 334.)			Record of 38 counties. (Report of 1880, p. 227.)		
	Mortgages.	Satisfactions.	Increase.	Mortgages.	Satisfactions.	Increase.
June 1, 1873 . .	$6,522,244	$3,162,936	$3,359,308	$7,165,791	$3,606,496	$3,559,295
" 1874 . .	7,254,648	4,025,402	3,229,246	8,032,515	4,504,922	3,527,593
" 1875 . .	8,620,521	4,180,230	4,440,291	9,659,391	4,920,440	4,738,951
" 1876 . .	7,656,158	4,472,807	3,183,351	8,793,096	5,331,587	3,461,509
" 1877 . .	7,595,147	3,577,201	4,017,946	8,749,053	4,390,030	4,359,023
" 1878 . .	6,216,946	3,184,253	3,022,693	7,423,253	3,807,168	3,616,085
" 1879[1] .	3,342,107	2,095,970	1,246,137	4,478,907	2,802,105	1,676,802
	47,207,771	24,698,799	22,508,972	54,302,006	29,362,748	24,939,258

No attempt appears to have been made to continue this record for the next two years, but from 1882 there has been an annual report, the aggregates of the returns being as follows:

TABLE II.

Record of Private Real-Estate Mortgages (exclusive of School Fund) as reported, 1882–1888.

	Mortgages.	Satisfactions.
Year ending June 1, 1882	$8,623,459	$4,749,236
" " " 1883	18,457,942	6,816,903
" " " 1884	78,224,311	3,693,439
" " " 1885	6,532,496	4,292,907
" " " 1886	5,661,032	3,074,920
" " " 1887	4,617,659	2,545,480
" " " 1888	4,604,999	2,786,399

[1] For five months only, in part of the counties.

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A glance at these reports shows that either there are inaccuracies in some of them or there is a most extraordinary variation in the mortgage business, and careful inspection reveals the sources of error. Take for example the startling figures for 1884. On examination of the detailed statement by counties, it will be observed that in each of the three counties of Clark, Jefferson and Scott the mortgages recorded exceed $16,000,000. These three counties are contiguous and are crossed by a branch of the O. & M. railroad, which in that year filed its refunding mortgage of $16,000,000 in these counties, and this amount was erroneously included by the county officials in their reports. A like error occurs in Delaware county on account of the record of the general consolidated mortgage of the C. C. C. & I. road, amounting to $12,000,000. A third instance appears in Fulton county, where the T. H. & L. railroad extended its line in 1884 and recorded its first mortgage of $5,000,000. Hence $65,000,000 of the increase is easily disposed of. The second source of error is the inclusion in the tables of a number of counties from which only one side of the account (almost invariably the mortgages recorded) is reported, and of course these cannot be retained in an estimate of the relative amounts of recorded and satisfied mortgages. It must be noted also that the number of counties whose reports are included varies from year to year. Eliminating all these vitiating factors from the reports, the record for these seven years stands as follows:

TABLE III.

Corrected Mortgage Record, 1882–1888.

	No. of counties reporting.	Mortgages.	Satisfactions.	Increase.	Estimated increase for entire state.
Year ending June 1, 1882	26	$6,407,812	$3,749,236	$2,658,576	$9,407,276
" " " 1883	42	10,220,721	6,816,903	3,403,818	7,455,956
" " " 1884	33	6,565,696	3,693,439	2,872,257	8,007,496
" " " 1885	31	6,038,549	4,292,907	1,745,642	5,180,612
" " " 1886	26	5,016,128	3,074,920	1,941,208	6,868,904
" " " 1887	23	3,963,679	2,545,480	1,418,199	5,672,812
" " " 1888	21	3,672,872	2,786,399	886,473	3,883,596
					$46,476,652

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In the report for 1880, covering the seven years from 1872, the errors noted above were avoided, so that we have reliable bases for calculation in the reports for 14 years, as shown in Tables I and III. The next question is: On what principle should the estimate for the entire state be made? From inspection of the detailed statements the following facts are deduced: 1. Except in rare instances the mortgages recorded exceed the satisfactions in every county in every year. 2. The increase of mortgages is always greatest in counties whose real-estate valuation is greatest, but not in any fixed proportion. 3. The counties reporting are as a rule those in which the real-estate valuation is below the average. The important counties of Marion, Tippecanoe, Vigo and Vanderburgh do not appear at all, and other wealthy counties only occasionally. The reason of this is that the law does not compel reports and the county officials who comply with it are naturally those in whose counties the business is lightest and most easily summarized.

From these facts it is evident that an estimate by real-estate valuation would be too high, and also that an estimate by the number of counties included, averaging each the same, would be too low. The difference in the results obtained by the two methods is much greater than might be expected. For example, the thirty-eight counties reported in 1880 represent only $153,809,208 out of a total real-estate valuation of $575,441,053, according to the appraisement of the state board of equalization. That is to say, the report shows the returns for forty-one per cent of the counties, but only twenty-six per cent of the real-estate valuation. As it is desirable to keep within the limits of certainty, I have used the more conservative method, and the estimates for the entire state given in Table I present the results of a computation by proportion of the counties reporting to the whole number of counties. Possibly, too, this is the fairer method; because, as is frequently objected to statistics of this character, there are some satisfactions of mortgages, and more partial payments, that do not appear of record. This objection, however, is not so serious as it might seem at first thought; for the proportion of such cases is small, and on account of fore-

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closures, new loans, *etc.* there is a constant "clearing up" of titles, in which mortgages really satisfied in past years are made to appear as satisfied in current ones. The average therefore is fairly accurate.

On this basis the increase of mortgages in the first period of seven years (Table I) for the entire state was $60,379,232; and during the second period of seven years (Table III), $46,476,652; or a total in fourteen years of $106,855,884; and this amount is an absolutely safe minimum. What relation it bears to the total existing volume of real-estate mortgages can only be conjectured. Perhaps it is one-half — in my opinion less — but possibly more. There are no available means by which the question can be determined. It is certain that this much exists and that, at the rate of seven per cent, the people of Indiana are annually paying $7,480,000 of interest on this indebtedness.

To reach an appreciation of the significance of this growth of mortgage indebtedness another factor must be taken into consideration, and it is one to which statisticians have paid very little attention. It is scarcely more important to know what proportion of mortgages were satisfied than it is to know how they were satisfied; because under the laws a mortgage is satisfied by foreclosure and sale of the property as well as by the payment of the debt. Of course the volume of debt is reduced in both cases; but the extent of the reduction by payment is proportional to the prosperity of the country, and the extent of the reduction by foreclosure is proportional to its financial embarrassment. Payment means that enough wealth has been added by the production of the land or from external sources to extinguish the debt. Foreclosure means that the margin of value in the land above the debt has been swallowed up by the debt and that the debtor is so much the less able to meet his unsecured liabilities. Beyond this influence towards general embarrassment in business, there is perhaps no serious detriment to the state if the mortgagee be a resident; but, considering the total volume of foreclosure, where the mortgagees are non-residents it is apparent that the money brought in by

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loans has in some way disappeared, and that the financial parasite which before sucked the blood is now swallowing the flesh. Unquestionably the payment of all the mortgage indebtedness of the state would be a public benefit, and the foreclosure of all existing mortgages would be an immeasurable calamity.

In the utter absence of ordinary statistical information on the subject, it is impossible to determine conclusively the proportion of satisfactions by foreclosure to those by payment, but the following facts will aid in attaining a correct conception of it. Prior to 1879 a very considerable part of the foreclosing in Indiana by non-resident mortgagees was done in the United States courts, because it was in some respects more convenient, and because those courts were believed to be less subject to local bias on controverted points, if any arose. I have had made a full abstract of the foreclosure decrees on the judgment dockets of those courts, taken by thirteen foreign companies engaged in the loan business during the years 1878, 1879, 1880, to ascertain the actual amount of foreclosure by them. The result is as follows:

TABLE IV.

Foreclosures in United States Courts for Indiana.

Company.	1878.	1879.	1880.
Northwestern Mutual Life Ins. Co.	$135,537.04	$69,169.39	$46,441.68
George P. Bissell, Trustee	120,090.71	60,137.73	182,962.87
Fitzgerald, Trustee	39,324.31	13,149.93	2,505.40
Providence Ins. Co.	9,296.00	...	...
Charter Oak Ins. Co.	7,771.66	...	...
Traveler's Ins. Co.	35,977.01	76,470.83	49,446.39
Thames Mutual Loan and Trust Co.	6,404.45	11,677.55	3,920.90
Phœnix Mutual Life Ins. Co.	149,742.61	138,154.30	33,883.92
Union Mutual Life Ins. Co.	8,790.02	1,930.25	5,018.71
Jonathan Edwards, Trustee	102,711.68	87,451.89	5,203.90
U. S. Mortgage Co.	80,195.68	...	...
Conn. Mutual Life Ins. Co.	4,530.60	20,476.15	...
Ætna Life Ins. Co.	...	11,970.32	...
Totals	$703,971.80	$490,588.54	$329,283.77

The decrease of foreclosure in 1879 and 1880 here shown was not an absolute decrease, but was due to the transfer of this

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class of litigation to the state courts. The forcing of residents of outside counties to come to Indianapolis to defend foreclosure suits became so oppressive that a law was passed by the state legislature (approved March 15, 1879) requiring foreign companies to foreclose in the counties where the mortgaged land was located, on penalty of forfeiting the right to transact business in the state. No new suits were brought thereafter in the United States courts, and the figures for 1879 and 1880 represent only the results of cases theretofore pending. As nearly as I can estimate from the opinions of attorneys representing these companies, less than one-half of their foreclosure on the average was done in the United States courts, the amount varying with different companies. Many attorneys preferred the state courts because the pleadings were less voluminous, the disposal of the cases was more expeditious, and the expense was less. The last-named was the most important consideration, because the mortgagee usually bought in the property for the full amount of judgment and costs and thereby paid the expense of the foreclosure. The thirteen companies named were probably foreclosing at the rate of $1,500,000 per annum at that time; and in my opinion, as well as in that of several attorneys with whom I have consulted, the total volume of foreclosure in the state was at least one-half the total volume of satisfactions, which in that period was about ten millions a year.

A similar conclusion will be reached from another line of facts. On account of the legislation mentioned and on account of losses on foreclosures (which will be explained hereafter), several of these companies have discontinued loaning in this state and have closed up existing business. From the president of one of these, the Phœnix Mutual, I learn that it "loaned a little over a million dollars in Indiana and foreclosed on fifty-three per cent of it." The business of George P. Bissell, Trustee, presents much the same result. Out of 290 loans made, of which only seven are now living, there were 124 foreclosures, that is to say, forty-three per cent of the whole number of mortgages. This, however, does not show the full extent of foreclosure; because in many instances these mortgages were paid by securing new

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loans of other companies and remortgaging the same property, so that while the old debt was virtually continued, the foreclosure that ultimately came in part of them does not appear in the preceding statement. I know that the business of these companies was managed as prudently as the average; and I feel safe in asserting that on the average, during the time these two companies were operating in Indiana, at least one-half of all real-estate mortgages made were foreclosed. Of course it must be remembered that the period referred to was one of financial depression, and that in normal years the proportion of foreclosure is much less.

If the people of any Western state may be considered thrifty and judicious, the people of Michigan may, and by the official records their condition appears to be as bad as that of their neighbors in Indiana. In 1887 an attempt was made by the bureau of statistics to ascertain the mortgage debt of the state through personal declarations of the owners of land. This is the best method of ascertaining the amount of existing debt; the only flaw in it being that some persons, considering that the public has no interest in their affairs, refuse to give the information. In consequence the returns are less than the reality; but in the desire to keep within the truth, we accept them as accurate. They show (report of 1888) that the real-estate mortgages of the state amount to $129,229,553, with an annual interest payment of $9,451,851, on a total realty valuation of $686,614,741. Of this amount $64,392,580 is on farms, and the annual interest charge is $4,636,265. The farms mortgaged are 47.4 per cent of all the farms in the state, and the mortgage debt is 46.8 per cent of the assessed value of the farms mortgaged. The number of foreclosures made during the year was 1667, and in only 131 cases were redemptions made, leaving a net loss of 1536 pieces of property by foreclosure in one year. The situation apparently justifies the statement of Commissioner Heath that "a very large proportion of the people seem to be in a financial rut, and are unable to extricate themselves."

In 1888 the Illinois bureau of statistics made an attempt to ascertain the mortgage debt of that state by another method.

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A carefully prepared abstract of the mortgage records was made for three years, 1870, 1880, and 1887, in which the amount of each mortgage and the term for which it ran were noted. From these amounts an average term for the whole annual amount of mortgages was calculated, and, on the theory that the average term of mortgages in consecutive years was substantially the same, it was assumed that the total mortgage indebtedness would be equal to the amount of mortgages recorded during the year multiplied by the average term. The plausibility of the method is heightened by the fact that there was no great difference in the average terms of the three years examined. If the amount of mortgages satisfied during each year were exactly equal to the amount recorded, this method would be proper and the result would be approximately correct; but in fact the two sums are not equal. The fallacy involved in the estimate is that of attempting the calculation of the relative distance of two moving bodies without any data relating to one of them. In this case the mortgages recorded are the fleeing hare, and the mortgages satisfied are the pursuing hound. The existing mortgage indebtedness is the distance between them, and it cannot be estimated from the speed of either alone. To illustrate: suppose that for ten consecutive years the mortgages recorded amounted to $10,000,000 annually, and the mortgages satisfied to $5,000,000 annually, the average term being the same for each year. A calculation based on the returns for the first year would give precisely the same total of mortgage indebtedness as one made on the returns for the last year, although the amount had actually increased $45,000,000. If the conditions were reversed, and the satisfactions were annually $5,000,000 in excess of the mortgages recorded, the calculations for the first and last years would again have precisely the same result, although the volume of mortgages had in fact decreased $45,000,000.

Still, the calculation is not without value, for it is evident that the amount thus ascertained is a reliable maximum or a reliable minimum according as the volume of debt has increased or decreased through a considerable number of years. The situation and known condition of Illinois are sufficiently like those

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of Indiana to justify the conclusion that the volume of mortgages has been increasing for twenty years or more in the one as well as the other, and this inference is confirmed by a comparison of the records for the first and the last of the years examined. The total number of real-estate mortgages recorded increased from 44,290 in 1870 to 63,660 in 1887, and the amounts for the same years increased from $75,309,898 to $99,795,684. While it is possible that satisfactions might keep pace in this increase with the mortgages recorded, the contingency is so remote and every iota of evidence is so clearly against it that it must be admitted that the volume of mortgages is increasing and that the estimate is a minimum. The total amount of real-estate mortgages on Illinois property in 1887, as thus computed by the statistician, was $381,322,339, and the annual interest charge was $12,702,542. The assessed value of the real estate in 1880 was $575,441,053. The great excess in proportion of mortgage debt to land value here shown, as compared with Michigan and Indiana, is due to the different rates of assessment used in the three states. According to the census of 1880, property in Illinois is assessed on the average at 25.44 per cent of its true value; in Michigan at 37.79 per cent; and in Indiana at 48.55 per cent. Our ascertained minimums of mortgage debt therefore stand relatively as follows: Illinois, $381,322,339 of debt on $2,262,000,000 of realty; Michigan, $129,229,553 of debt on $1,143,000,000 of realty; and Indiana, $106,855,884 increase of debt in fourteen years on $1,109,000,000 of realty. The annual payment of interest by the three states on this certainly known amount of debt is the enormous sum of $29,634,393.

With this state of facts demonstrated to exist in three states that are rich in natural products, fertile of soil, and well-conditioned for commerce, it will probably be conceded that the mortgage indebtedness of the Western states is a matter worthy the attention of economists and statesmen, as well as of the people of those states. Whatever may be thought of its effects, it is a fact — mountainous and immovable. And more, the probabilities that loom far above the figures here presented make it very questionable whether the "alarmists" who have discussed the

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subject have in fact materially exaggerated the existing condition.

The most serious effects of a state of general indebtedness are two: first, its aggravating force in times of financial depression; second, its constant drain on the production of the commonwealth. The first is well illustrated by what has occurred in the states mentioned in the past fifteen years. For seven or eight years after the Civil War "times were good." Money was plenty, business of all kinds was prosperous, and a general spirit of adventure in business enterprises had grown up. Then came a financial depression. Its causes, for present purposes, are immaterial. History assures us that such depressions recur at intervals, from various causes, and we must of necessity treat them as conditions that may exist again at almost any time. Money became scarce. Interest was not easily met. As a rule, in the effort to keep up the interest on secured debts men pushed off the payment of unsecured debts, and so every class in the community partook of the injury, while the ready money in the country was constantly drained away from it by the payment of interest on foreign loans. In a very short time the era of bankruptcy and general foreclosure was reached. The extensive paying power of money in a community where credit is common is well understood. A pays B $100; B, with the same money, pays C; C pays D, and so on until $1000 of debt may be extinguished by the one sum. In the absence of the $100 this satisfactory method of transfer was reversed. D sued C; C sued B; B sued A; and so instead of satisfaction of debts there arose litigation, attorney's fees, court costs and forced sales of property. This was especially serious as to mortgaged property; for universally, by the terms of mortgages, on default of interest the whole debt became due and foreclosure might be had at once. Hence the amount of debt immediately payable was enormously increased at the very time when payment was most difficult, and the natural stringency of the depression was multiplied over and over again.

But this was not the worst effect. On account of sales on foreclosure, sales on execution, and the voluntary efforts to sell

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land in order to obtain money, the market value of real estat was soon depressed much below its true value, and remained s for about ten years. One or two instances will show the natur of this calamity. A piece of property for which the owner ha refused $25,000 was mortgaged in 1876 for $6,000, in order t raise money to meet pressing claims. In 1879, the owner bein driven to the wall, the mortgage was foreclosed and the prop erty bought in by the mortgagee for $6,826, the amount du with accrued interest, attorney's fees and costs. In 1887 it wa sold for $10,500, and the purchaser has since refused $12,000 A piece of property appraised by three sworn appraisers a $22,500 was mortgaged for $7,500. In 1878 the mortgage wa foreclosed and the property bought in by the mortgagee fo $4,500. Under the remainder of the judgment ($3,793) al other property of the owner was levied on and sold. The mort gaged property has since been sold for $12,000. These case are mentioned because they came under my personal observa tion, but they were not unusual instances. They are fair sam ples of what occurred in the majority of foreclosures in thi state. It should be added that the personal judgments taker on foreclosure were usually against several persons, as each per son who bought mortgaged property commonly assumed the mortgage debt. It is also to be noted that all real estate whether mortgaged or not, felt the depression in market value For example, I have in mind a block of unincumbered vacant lots which in 1873 were selling at $3,200 each. In 1879 they sold very slowly at $500 each. At present they are selling readily at $1,500 each.

It is very evident from these facts that mortgage debt, in times of financial depression, has a power of destroying value largely in excess of its own volume. To illustrate: in the sec- ond case mentioned the owner of the property had a fair margin of at least $4,000 above the mortgage debt, under normal con- ditions; under foreclosure and sale he not only lost this but also, by owning the property, suffered further positive injury to the amount of $3,793. I believe that the opinions of intelligent observers will bear me out in the statement that,

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nder such financial conditions as existed ten years ago, the ılue-destroying power of mortgage debt is at least equal to vice its volume, and this power must be kept in mind if the gnificance of mortgage debt is to be understood. On the ortgaged farms of Michigan the mortgage debt is reported be 46.8 per cent of the assessed value. Assuming for the ırpose of illustration that the assessed value is the true ılue, my proposition is that if these mortgages were foreclosed a time of general financial depression the entire value of the rms would be consumed in satisfying the mortgages. Further ıan this, there would result a general depreciation of value in :alty that would cause a like loss on all unincumbered property ›ld while the depression continued.

Of course this loss of value is relative to the owners and not ›solute. The subsequent owners have the advantage of the ·adual return of the market value of the realty to its normal ılue. There can be no loss to the mortgagee unless he sells hile the depression continues. In some cases foreign loan ›mpanies have done this and, mistaking the nature of their ss, have complained bitterly of the wild speculative spirit that ıd so greatly overestimated the value of the realty pledged to ıem. At the present time, property having regained some- ıing like its normal value, such losses have been compensated / corresponding gains, so that no foreign company, so far as I ın learn, has lost anything, and some have realized handsome ·ofits. The Connecticut Mutual Life Insurance Company, in s report of January 1, 1888, to the insurance commissioner of onnecticut, states its net gains on sales of real estate taken in reclosure to that date at $752,175.17. This profit was chiefly ı Chicago property; and I will venture the prediction that this ›mpany will realize at least an equal profit on the realty now vned by it in Indiana and Illinois.

It is plain, both from the facts stated above and from reason, ıat no just appreciation of the condition of owners of farm ·operty can be gained from statistics of farm mortgages alone. he market value of farms is necessarily affected by fluctuations the value of neighboring city and town property, and *vice*

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versa. The effect of throwing on the market large quantities of realty of any kind is to decrease the market value of realty of all kinds. There can be no large depreciation of value in farm property without a corresponding decrease in the value of city and town property, and no large depreciation of the value of city and town property without a corresponding decrease in value of farms. Even if the contrary were possible in theory, it could not be in fact; for the same causes that glut the market with realty of one kind will at the same time glut it with realty of the other, and so the two will increase or decrease together. Every cause that tends to create, continue or increase financial depression is a necessary factor in the economic consideration of general mortgage indebtedness; and as to any particular portion of such indebtedness no cause is more important than the remaining portions.

The second noteworthy evil is the drain of money from the mortgaged territory by the payment of interest. In the three states mentioned, as we have seen, there is annually paid at least $29,634,393 of interest on real-estate mortgages. How much more is actually paid can only be conjectured. There is no way of determining what proportion of this goes outside the states paying it. The Illinois bureau attempted to ascertain what amount of foreign mortgages were recorded in 1887, but reported that it was unable to do so on account of the large amount of foreign loans made in the names of residents, for some real or fancied business advantage. The proportion shown of record was eleven per cent of the total, but it was declared that "how much should be added to this amount" must, from the nature of the case, "be a matter of individual opinion." It is scarcely worth while to speculate on the question, but it would seem clear from the relative wealth of the two states that the percentage in Indiana must be greater than in Illinois. There is another class of statistical information, however, from which some conception may be gained of the tribute paid by the Western states through interest on mortgages and rentals of property taken in foreclosure. The following table, taken from the report of the insurance commissioner of Connecticut for

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1888, shows the official statements of five life insurance companies as to their annual income from interest on mortgage loans, and as to the value of real estate now owned by them in Indiana and Illinois.

TABLE V.

	Annual interest on mortgage loans.	Realty in Indiana.	Realty in Illinois.
Ætna	$982,637	$123,509	$161,801
Conn. Mutual	1,829,538	2,107,334	2,247,189
Phœnix Mutual	440,157	509,487	312,428
Traveler's	248,280	626,476	228,083
Mass. Mutual	158,695	59,198	191,748

As to a number of companies the details are not given; but the total annual interest received on mortgage loans by twenty-seven American companies reported as doing business in Connecticut in 1887 was $12,832,546. Of course not all of this comes from the West, and on the other hand these companies represent only a small portion of the foreign capital loaned on Western real estate. The rentals received by these same companies in 1887 amounted to $1,728,809. Their total income was $123,118,215, and their total expenditure (including losses) was $88,839,354. The net profits were $34,278,851. It will be remarked that the profits of these companies are not due to mortgages alone. I mention them as prefatory to the statement that the payment of interest on mortgages is in fact but a small portion of the annual drain of money from the Western states through the usufructuary power of capital, and that the payments of insurance premiums in excess of the returns in losses paid is a much greater sum. But the point where insurance enters directly into the consideration of mortgage indebtedness is the universal provision of mortgages for the insurance of the mortgaged property in favor of the mortgagee, with a stipulation that on failure to keep up insurance the mortgagee may do so and add the premiums to the debt. Possibly this insurance money is well spent, but practically it would not be spent at all, in many instances, but for the mortgage. In those cases it

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is just as much an incident of the mortgage as the interest is, and amounts to so much additional interest.

Other features of the steady drain of profits from the Western states are equally striking. In the estimates above given railroads have been omitted entirely. It is notorious that no railroad in Indiana is actually owned by Indiana men, although in two or three instances they control the stock. The total mortgage indebtedness of all the roads will cover their total value, and the net profits, with the exception of not over $50,000 per annum, go to non-resident capitalists in the shape of interest and, in a small proportion, dividends. The assessed value of the railroad property in Indiana in 1888 was $64,211,717 and the actual value is about twice that sum. The yearly payment of interest computed on this basis (the average rate of interest on railroad bonds being six per cent) would be about $7,500,000. By the late statistical report of the Interstate Commerce Commission, Indiana has 3.82 per cent of the railroad mileage of the United States, and the total annual interest payment on bonds of United States railroads is $168,821,401. Computed on this basis the annual interest payment from Indiana roads is $6,499,000, and this is a safe minimum, for the Indiana mileage is beyond doubt as heavily mortgaged as the average. The nominal amounts of mortgage and interest charge are enormously in excess of the figures here presented, but as they cover the lines in their extent through other states they afford no basis for computation as to Indiana.

From the sources mentioned and from the interest payment on public debt, chattel mortgage debt and unsecured debt, it appears that Indiana must make to non-resident capitalists an annual payment greater than the entire tax levy of the state (between twelve and thirteen millions). It is difficult to portray adequately the evil of this drain on production. Clearly, there can be no advance in wealth from production unless enough products are sold outside the state to cover this drainage, in excess of everything bought in the state from outside. Clearly, too, where the balance of trade is not thus favorable, the state is retrograding in real wealth so far as production is concerned. The wealth

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brought in by immigration and the increased value of lands from increased population more than counterbalance the loss in apparent wealth, but the steady increase in mortgages and non-resident ownership warns us that the residents are moving towards the condition of tenants to absentee landlords. As an axiomatic proposition, any condition of affairs, however produced, that without compensation in value causes the transfer of the gains of one state or region to another, whether under the same government or not, must necessarily injure the tributary state and, if persisted in, bring it to ruin. Such a condition tends constantly to create scarcity of money and produce financial depression. In times of general financial depression it invariably causes the tributary state to suffer much more than it would if its natural powers of recuperation were not thus pledged and forfeited. An example may be seen in Ireland, from which, originally by taxation and of recent years by absentee landlordism, the profits of labor have been continuously drawn away to be expended in other countries. Its wretched condition has excited the sympathy of the civilized world. The causes of its misfortunes are but too apparent.

But, as it is always to the interest of those who profit by any economic condition to endeavor to reconcile those who suffer by it, we are informed that the general state of indebtedness in the West is a blessing. To whom? Certainly not to the individual debtor. There are comparatively few uses to which borrowed money may be put that will preserve the principal intact and yield a profit greater than the interest, and of those that do exist the greater portion must be classed as lucky speculations. If this were not true, the men who have capital would themselves employ it in such investments as would yield these greater returns. There are of course exceptions, but as a rule it is absurd to expect men unused to handling capital to employ it to greater advantage than those whose business has long been to manage it. But even if there were such extraordinary sagacity in the borrowing classes, the truth is that but a small portion of the borrowed money goes into those substantial betterments or judicious enterprises that are pictured as the full

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justification for extensive borrowing. As a rule the money goes, like any other money placed in the hands of men not accustomed to its use, in profitless extravagance or unfortunate speculation. This is better understood by the Western people than it was formerly, but the information has been obtained by sore experience. No man who has "gone through the mill" can be convinced that mortgage debt was a good thing for him.

As to the community, the disadvantage of general indebtedness ought to be equally apparent from the facts stated above. Suppose that all the surplus capital were taken out of Connecticut or Massachusetts and the indebtedness of the state were increased to the extent of two or three hundred millions, would the state be benefited? Would any amount of gravel roads or tiling [1] compensate for the change? The economists who hold to the affirmative may succeed in deluding themselves, but they cannot longer delude the people of the West. There are two cheering signs in this region. First, the mortgages of the present are mostly for the refunding of old debt. Second, there is a wonderful growth of building associations, by which the people are trained to accumulate capital gradually and expend it intelligently. Thrift will stay the tide even if it cannot turn it. In Indiana, although the mortgage debt has grown more than forty-six millions in seven years, the annual increase has declined more than one-half from 1882 to 1888. Possibly the turning point may be reached even under present conditions, and a decrease of mortgage debt may begin.

In conclusion, however, it should be said that the facts stated above are merely manifestations or natural results of a well-known truth: In some way, the capital of the United States has been aggregated and is still being aggregated in certain sections, and by its usufructuary power is drawing to the same sections the profits of labor of the other sections. If this be the result of national legislation, the tributary states may blame themselves for its existence. The present condition cannot be explained by the aphorism that "wealth is drawn to commercial centres," or on the theory that the richer parts of the country

[1] [See POLITICAL SCIENCE QUARTERLY, IV, 3, 445 *et seq.*]

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are such because they are the older. We of the old Northwest Territory have completed a century under organized free government — a century which has always been believed to be one of prosperity in agriculture and commerce. It is not possible that the conditions now existing are the results of natural causes, and if it were, the outlook for the future would not be pleasing. Our soil has been generous, but it shows the loss of its virgin fertility. Our forest product has been enormous, but it cannot be duplicated from the same sources. If nature be at fault, what should we expect of our second century? But we are not forced to so hopeless a conclusion. Reason affirms that the impediments which have hindered our advance are artificial. The causes that produced our present condition were created by men and may be removed by men.

J. P. Dunn, Jr.

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WELLS' RECENT ECONOMIC CHANGES.[1]

IT would be difficult for an economist to choose a subject of more general interest than that which Mr. Wells has taken. The industrial organization of the present age has changed from that in the past in so many ways that the actual economy of the American people is a radically different one from that of their ancestors. And certainly there is no American economist better fitted by nature and experience than Mr. Wells for the task he has chosen. He has a good mental equipment for a statistician and a wide knowledge of all the economic changes of recent times. His mind is a great storehouse of facts which need only to be properly arranged and co-ordinated to be of the greatest value to all persons desiring to comprehend the economic changes taking place at the present time. There is no other place where the leading facts bearing upon the recent industrial changes have been so well presented as in this book. In fact we can almost say that there has been no attempt made by other writers to arrange these facts properly, so as to show their bearing upon economic doctrine.

So long as the interest of the reader is directed solely toward acquiring the facts connected with the recent economic changes, he will find Mr. Wells' book of especial importance. But there is another side to the matter which demands attention. While Mr. Wells has a ready command of facts and is strong in all particulars where facts have a bearing, yet in his logic and in the way he draws conclusions from his facts, Mill and Cairnes have surely not been used as models. From this combination of circumstances it seems to me that his book will have an undesirable effect. It must become a part of our present literature because of the store of facts which it contains. It

[1] Recent Economic Changes. By David A. Wells. New York, Appleton & Co., 1889. — xii, 493 pp.

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will pass into the hands of all students of economics and be read by the general public more than any other book of the day. If therefore attention be not directed toward the weak side of this book, it will be likely to leave upon the public a very erroneous impression as to the present state of economic science, and to retard that growth of good reasoning upon which all economic progress depends.

In this connection there is another point of view which is well worthy of attention. It is often asked why economic writers do not have a greater influence in moulding public opinion. I think even Mr. Wells would admit that his many discussions have not had that influence upon the public for which he might well have hoped. How is this relative lack of success to be explained? It cannot be said that the trouble lies in the facts which Mr. Wells presents, because in all his writing he is able to produce an abundance of facts in support of his theories. The trouble lies in his logic. He makes use of all the erroneous logical conceptions which are popular with the public; and thus his opponents, by the use of the same logic, are able either to avoid his inferences or to substantiate their own opposite conclusions. There is no way to raise the level of economic discussion but by an education of the public out of the erroneous logical conceptions of which they make use. With popular logic, it is safe to say, almost any conclusions can be substantiated from any set of facts; because the logic which intervenes between the facts and the conclusions is of such a nature that the reasoner draws from the facts those conclusions which harmonize best with his preconceived notions. The criticisms, therefore, which I shall make upon Mr. Wells' book will be directed primarily against his use of logic. I hope to show that such reasoning as Mr. Wells employs, even though it is still in popular use, is logically erroneous and overlooks all the recent developments of economic science.

There is special danger at the present time that the errors of this book will be overlooked and that the methods of the author will receive recognition from a large body of economists, because the conclusions at which Mr. Wells arrives har-

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monize with their views. Economists should not, however, shut their eyes to erroneous reasoning merely because they agree with the conclusions. The reasoning is in reality of equal importance with the facts, and economists ought to criticize severely any book that uses poor reasoning even though the conclusions are in harmony with their point of view. So long as the tendency of a book and not its reasoning is made the basis of approbation, the tone of all economic discussion will be very low. In the confusion which will thus arise, economic science cannot influence the development of public opinion to the extent which is to be desired.

The point of view taken by Mr. Wells is to such a degree out of harmony with mine, that it would be very easy for me to join issue with him upon his conclusions and direct my whole attention towards refuting them. In this way perhaps a more interesting discussion would arise than that upon which I am about to enter. Yet I think that such a discussion would be comparatively worthless for the development of economic science because of a lack of harmony as to logical method. I shall therefore direct my criticisms primarily against that part of Mr. Wells' book where his conclusions agree in the main with my own. In this way the logical method may be brought into the foreground and a correct comparison made as to the validity of the different methods of reasoning.

If I understand Mr. Wells' position correctly, his views harmonize quite fully with mine as to what is the best policy of our government in relation to the use of gold as a basis of our money system. We both agree that the time has come when gold can with advantage be made the sole basis of our money system and that the disadvantages of a double standard far outweigh any advantage we can derive from it. Here then a good opportunity presents itself to test the validity of Mr. Wells' reasoning, since neither facts nor conclusions are in question. It is the road from the facts to the conclusions to which I wish to direct attention.

Mr. Wells states clearly his logical method of reasoning on pages 124 and 125. The first premise from which he reasons

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is that no extraordinary or complex agency should be invoked to explain phenomena so long as ordinary and simple ones afford an equally satisfactory explanation. This canon seems reasonable at first sight, yet on a little examination it will be seen that it is without any value, because it does not give any criterion by which to distinguish an extraordinary or complex agency from an ordinary or simple one. Mr. Wells would doubtless regard as very simple an agency which, to his opponent, would seem very extraordinary. This fact is clearly brought out in his second premise, because he starts out with the assumption that a particular doctrine about supply and demand is the most natural presumption in the case. But Mr. Wells certainly is not so ill-informed of economic discussion as not to know that this very premise which he regards as so natural is one of the most disputed questions in economic literature. What help can the preference of the natural presumption give us, when each writer regards his assumption as the natural one and that of his opponent as the extraordinary and complex one? Mr. Wells' position is remarkable from still another point of view. At its very basis lies the assumption that the recent fall in prices is due to improvements in production and not to the scarcity of gold. This presumption Mr. Wells regards as the natural one. Yet this method of accounting for the general fall of prices, natural as it may seem to Mr. Wells, has never been used before the present bi-metallic discussion. The whole subject of the changes in the value of the precious metals has occupied the attention of economists for the last two hundred years; and in every such discussion, until the present time, the assumption has been that if prices as a whole have fallen it was a result of an appreciation of the value of money. It is almost comical therefore to see Mr. Wells, in the face of the whole economic discussion of the last two centuries, setting up a new point of view, not yet a dozen years before the public, as the natural one. Does it need any more proof to show that the attempt to distinguish between the ordinary and the extraordinary or the natural and the artificial is of no value in arriving at correct logical conclusions?

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In the closing section of the paragraph to which I have referred Mr. Wells makes a serious mistake in confusing the abundance of capital and a low rate of interest with an abundant supply of money. From the approving manner in which he quotes Lord Addington he seems to affirm that there can be no appreciation of the value of money so long as there is an abundant supply of capital and a low rate of interest. After all the discussion which has taken place in order to show that the popular use of the word "money" has two meanings, — the one referring to the quantity of the currency and the other to the abundance of loanable capital, — it seems strange that an economist of his reputation should confuse the two. A low rate of interest indicates an abundance, not of money, but of capital seeking investment; and it is quite possible that a nation should have a plentiful supply of capital and yet have a decreasing supply of money. Capital may grow and interest may fall at the same time that money is becoming scarce. In what way would Mr. Wells account for the fall in currency prices at the close of the Civil War except by a change in the relation of the quantity of paper money to the volume of business?

But even on Mr. Wells' own basis there seems to have been an increase in the value of gold. He claims that there has been a reduction in the price of those commodities only which are now produced by improved processes. Another class of commodities, he thinks, has increased in price (page 191). This class is composed mainly of those articles which are produced by unaided labor under conditions similar to those by which the articles were produced in earlier times. Now, gold is a product of manual labor and belongs to the latter class, not to the former. Gold is obtained in the same way as formerly. There have been no changes in the methods of producing it. Hand labor still washes the gold from the sand, and its value must be determined by the value of labor. Labor having increased in value, as Mr. Wells claims (page 361), we should expect to find as a result that the value of gold in the market would be greater than formerly.

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The challenge which Mr. Wells gives to his opponents, to show how a scarcity of gold can depress prices, affords the most favorable opportunity to compare his methods of reasoning with established economic canons. He is perfectly safe in asking for a concrete case of a particular commodity which has fallen in price from a scarcity of gold, because such a scarcity affects all commodities alike and does not furnish concrete cases. The chief difficulty with Mr. Wells is that he takes hold of this problem wrong end first. *How prices are depressed* is not an independent proposition to be treated alone. It can be solved only after knowing *how prices are fixed.* That the scarcity of gold lowers prices is a deduction from the well-known facts upon which the laws relating to the value of money depend. While the effect of a scarcity of gold in lowered prices may be disputed, no one yet has denied that the rapid increase of the gold supply since the discovery of America has raised prices. If an increase in the supply of gold will raise prices, it is certainly good logic to assume that a scarcity of gold will have the opposite effect. Perhaps, however, the best proof of the fact that a change in the quantity of money affects prices comes from the history of paper money. There is in this history an abundance of facts showing that the quantity of money is an important element in fixing prices, and Mr. Wells must transfer his battle to the causes fixing prices in these cases before the facts of his opponents can be called into question. He must, in the first place, give us a theory of fixing prices in which the quantity of money plays no part — a theory making prices depend solely upon the abundance of capital, the rate of interest, the amount of credits or the quantity of circulating personal property. When such a theory is advanced by Mr. Wells or the friends from whom he quotes, they will find that their opponents have ample resources to sustain the position of the earlier economists.

The only strange thing is that he should suppose that the facts he presents are new to economic literature and hence can have an effect upon the theory of money. He talks of the different quantity of money needed by France and England to do

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the same amount of business, just as though this fact was not illustrated and explained in every elementary political economy. He brings forward a table (page 222) to show that prices are not determined by the quantity of money, just as if the author of the laws of money was a mere theorist ignorant of commercial facts. While there has been an abundance of fault found with Ricardo's knowledge of industrial relations, no one has dared to question his thorough familiarity with money matters. He was a practical business man who appreciated fully all those conflicting surface currents which affect the money market. His success as an economist lies in the careful analysis he made of these conflicting causes and in the extent to which he revealed the laws upon which they depend.

The defects of Mr. Wells' point of view come out very clearly in discussing the future of silver. From what he says on page 459, it does not seem that he anticipates or even desires any reduction in the price of silver. He has no objection to the bolstering up of the price of silver, only the bolstering must be done by his method and not by that advocated by the bi-metallists. They would like to have our government keep up the price of silver by increasing the coinage of our country. This Mr. Wells does not wish to see done. He thinks the duty of upholding the price of silver should fall upon the less civilized races, for which a silver standard is in his judgment peculiarly adapted. Make them more prosperous and they will use more silver, and as a result the present supply of silver can be used up in their currencies. Accepting this way out, Mr. Wells wants governmental action as much as our bi-metallists, the only difference being in the line of action to be pursued. Mr. Wells' remedy is the one he applies to all industrial troubles — that of the reduction of the tariff. Reduce the tariff and then, in his opinion, we can secure a market for all our silver in the less civilized nations with whom we trade. The error in this position lies in supposing that the American people are as a whole interested in a high price for silver. On the contrary, they are deeply interested in a low price for silver. Silver is a commodity which it is a good thing for the American people to consume. It has

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qualities which would make it especially useful to mankind if it could be cheaply produced. It will not easily tarnish and has a brilliancy and beauty that would cause it to displace, for many purposes, the cheaper metals which lack these qualities. Its clear, metallic tone makes its use for musical instruments very desirable. Silver ware also is of immense importance to the American people for household uses. We must therefore regard the interest of the American people as lying in cheap silver and not, as Mr. Wells supposes, in dear silver. The great advantage of a single standard of gold lies in the fact that it allows the use of silver as a commodity by the American people, instead of having it stored up at Washington, as the advocates of dear silver demand. In the end the American people will accept neither the solution demanded by the friends of silver nor that suggested by Mr. Wells. They will not pile up the silver in Washington, nor will they export the mass of it for the use of less civilized countries. They will retain it for their own use and consume it in a thousand ways that will add materially to their happiness and prosperity.

In the endeavor to restore the price of silver to its former level there is nothing akin to the doctrine of protection. It lies at the basis of all protectionist arguments that in the end the protected articles become cheaper to the public than foreign productions. Owners of iron and copper mines get their protection on the plea that it helps to cheapen the metals they produce; and they present a mass of facts which at least seem to show that protection has benefited the consumers of their products. The owners of silver mines, on the contrary, do not ask for a higher price of that product in order that it may in the future be permanently reduced to a lower price than ever before. They claim that a high price of silver is a benefit to the public, and they ask the government to lend its aid to their endeavors in behalf of a permanent increase of this price.

Butter-making is the only other industry which stands in the same position. The dairy men ask that the price of butter be restored to what it was before the manufacture of oleomargarine,

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and they make no claim that this increase of price will lead ultimately to lower prices. The dairy men want "natural" production as badly as Mr. Wells does. He therefore deserves great credit for breaking away from his prejudice for "natural" production in this case. It is hard, however, to see why the "natural" production of butter should not have the same preference as that of sugar. If the cane is defrauded by getting sugar from a beet, certainly the cow is wronged by making butter from a hog.

A few more illustrations of the logic of Mr. Wells may profitably be selected from other portions of his book. His defective reasoning comes out quite clearly in discussing the relation between wages and labor-saving machinery. He argues that labor-saving machinery must be beneficial to laborers because wages have risen since the introduction of improved machinery. In this matter his opponents presumably would not contradict any of Mr. Wells' facts. They would merely point out the defects in the conclusion. Wages may have risen, they would say, but not in proportion to the increase of productive power. If this is true there must be some cause for the deficiency — there must be some counteracting agency which has prevented the laborers from receiving a proper share of the increase of productive power. For those analyzing the present situation in this way, it is at least tenable to maintain that the one-sided industrial development of the laboring classes and the economy of skill resulting from the use of large quantities of machinery are the causes of the slower increase of wages as compared with the increase of productive power. The difference in the two positions, therefore, is not a question of fact as to the increase of wages; it is merely a question of reasoning as to what is the influence of the different agencies which are operating upon the laboring classes.

Another illustration of bad reasoning is to be found on page 370, where the author assumes that the absolute share of the product to both laborer and capitalist has been increased because of the increase of the total product. This theory overlooks the fact that the whole product of industry does not

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go to capitalists and laborers. The whole problem of rent and the influence that it has on the distribution of wealth are overlooked. There has been nothing in the development of economic doctrine in this century that is of so much importance as the setting aside of this early conception of distribution and the introduction in its place of the Ricardian conception, by which rent becomes a factor in the distribution of equal importance with the other two. But Mr. Wells' reasoning comes in conflict with accepted economic doctrine in another way. He assumes that wages are fixed by the average return for labor and not by the least productive labor. According to well-established economic doctrine, wages and interest are determined by the margin of cultivation, that is, the poorest land of which the community makes use. Any advantage possessed by laborers on better land is taken from them as rent. There is hence a great fallacy in assuming that all the increase of productive power has been added to wages and capital. This favorable result could only obtain when poorer lands have not been brought into cultivation since the increase of productive power. To the discussion of this problem Mr. Wells adds nothing. His reasoning, therefore, is defective and his conclusions are out of harmony with economic doctrine.

The illustrations I have used are sufficient to give a correct idea of Mr. Wells' method of reasoning. He reduces all economic problems to too great a simplicity. He has too few causes, and all these causes he makes more powerful than they really are in the economic world. Each class of phenomena is, from his point of view, the result of some one force or cause, and these causes are so few in number that he does not seem to regard any disturbance of the action of one cause by another as possible. Mr. Wells seems also to think that if one cause is really at work, it must work so undisturbed that the effect will be wholly its effect. If improved production lowers prices, he thinks that all reduction of prices must result from improved production and that no other cause can play any part. If wages have risen because of the freer use of machines, and if the results are good as a whole, he seems to infer that machines

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cannot produce any injurious effects. He is never satisfied unless his proof tallies with the effect of his single cause, as in an engineering problem. Good reasoning upon economic subjects is, however, based upon a very different supposition. There is in society a great variety of causes in operation, and their effects never tally exactly with those which would be produced by any one cause operating alone. Oftentimes a cause is so counteracted by the effects of other causes that the results do not seem to show any effect of the particular cause in question. Yet we know that it was in operation, and we can measure its effects in a negative way by seeing to how great an extent it has lessened the effects which would follow from the other causes if it were not in operation. The names Mr. Wells applies to his causes indicate very clearly his method of reasoning. "All-sufficient" (page 87) and "all-pervasive" causes (page 205) sound well, but are not to be found in an economic world. "Synchronous" causes belong to the same class. It is unfortunate that Mr. Wells did not point out some "irresistible" cause. He also speaks as though there were causes as constant as the influence of gravity — an assumption which shows a wrong conception of the way economic causes influence phenomena. Mr. Wells is perfectly right in asserting that the advocates of the scarcity of gold can produce no such causes nor show any of their results in an economic world. They would be likely to reply that they had no desire to produce any such causes, and to make the same issue with him that I have made as to the logical method of proving economic propositions. When gold rises in price, other prices certainly do not drop like shot; and Mr. Wells wastes time in proving that there is no such close relation between the price of gold and the price of commodities. There are so many other causes besides the scarcity of gold that affect the prices of commodities, that any change in the quantity of money can be shown only by the most careful investigation running through a long series of years.

Economists do not regard a doctrine as imperfectly proved merely because some of the facts do not appear to fully accord with it. The greatest successes in the analysis of economic

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phenomena have been those which have shown the law to be entirely different from what surface appearances seemed to indicate. On the part of Ricardo and other leaders of modern economic thought there has been no tendency to hide or discolor facts merely because the doctrines which these authors advocate do not have all the facts on their side. It is expected that an apparent opposition between the various classes of facts will appear in the investigation of any problem. He is the skilful economist who so analyzes these complex conditions as to show the simple laws which work beneath the surface.

We now arrive at the proper place to answer the question raised by Mr. Wells as to the cause of the present reaction against free trade throughout the whole civilized world. A little of the history of economic theory will throw a wonderful light upon this subject. The agitation for free trade and sound currency was begun by Adam Smith, yet the strong array of facts he presents made little or no change of public opinion. The same old fallacies throve; they even gained in force through the next thirty years, before Ricardo took up the struggle for the new economic doctrines. He, however, fought his battle not with facts but with sound logic and bold theories. Thirty years of such warfare resulted in a decisive victory for the new commercial policy. But no sooner was the movement successful than new leaders were chosen. Facts now seemed to prove the free-trade theory, and a resort was again made to the weak logic of the earlier period. The smooth tongue of Bastiat displaced the rugged logic of Ricardo, and in every land the Manchester party found adherents who strove to convince the public that progress could be hoped for only through an imitation of English civilization, political and economic. Cartloads of English facts were imported by these enthusiasts, which, when watered by poor logic, were given as free food to all their adherents. The poor logic seems however to have been the only part of the dose assimilated by the public; and at the end of another forty years it seems to have neutralized all the advantage gained by the Ricardian movement. Not only does the economic policy of the civilized world seem

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to have returned to that of an earlier period, but the vantage ground obtained by logic and theory has been to a great degree lost. In the discussion of free trade we find ourselves back at the time of Adam Smith, because we have gone back to the logic of his age. So long as both parties resort merely to facts vitalized by feeling, neither can win more than an apparent victory.

Economists have nothing permanent to gain by destroying the dogma that free trade is good for all nations and ages, if in its place they set up another, asserting that national industries are mere creatures of governments. The success of the beet-sugar industry in Germany no more proves the second dogma than English free trade did the first. It is as useless to expect that the sugar beet will thrive in all parts of Europe as it would be to expect the same of the peach or the grape. A mere imitation of a successful German policy will be as disastrous as a like imitation of England has proved. Universal theories are failures because the superstructure reaches out beyond the facts upon which it is based. Each economic policy has a value only under the particular industrial conditions of a given nation at a given time. It is not the mere accumulation of facts that will win permanent victories for those who believe that the economic policy of each nation should be based upon its own industrial conditions. Only by the development of better logic and sound theory can they use the facts with enough skill to thoroughly root out the creed of universal free trade and thus give to each nation a national policy which will develop all its resources.

Before closing this review I wish to take up a few problems where issue may be taken not merely with the author's reasoning but also with the facts upon which his reasoning is based. Mr. Wells devotes a considerable space to the discussion of the beet-sugar industry in Germany and the iron industry in America, and endeavors to show the great injury done by the protective policy of America and Germany in fostering these industries. If he had presented all the facts bearing upon the development of these two industries, there would have been no reason why

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at this time these problems should be discussed. But those peculiarities in Mr. Wells' reasoning of which I have spoken have led him to color the facts in such a way that the real progress of these industries and the causes aiding in their development, together with the influence which they have upon the whole industrial system of the countries in question, cannot be seen. I shall therefore take up both these problems, and show in a concise way what are the leading facts upon which conclusions opposite to his have been based.

To know the importance of the sugar industry of Germany, not only to the welfare of Germany but to that of the whole world, a short sketch of the production of sugar for the last three hundred years is necessary. The cane sugar is suited only to semi-tropical regions and must be produced under the social and political conditions which are there prevalent. On account of the ignorance of the people and the insecurity of property, only the crudest methods of production have been brought into use. As a result of this condition of affairs three hundred years have gone by and no change has been made in the methods of producing sugar. The same crude machinery and wasteful methods are in use. The people of the whole world have paid for ages a very high price for their sugar, and there seemed to be no hope that any change in the social conditions of these regions would allow the inauguration of any better methods of production. To remedy this state of affairs, Germany endeavored to produce its own sugar from the beet root. For a long series of years the government has encouraged the production of sugar from beets, until at length a beet has been obtained which is suited to the soil and which yields sufficient sugar to make its production profitable. In the contest between the cane sugar of the South and the beet sugar of the North, climate was on the side of the South while intelligence and capital were on the side of the North. Intelligence showed itself a more important factor than climate, and the price of sugar produced in Germany has now been reduced much below what it could have been while the whole supply of the world was obtained from the half-civilized semi-tropical regions. This reduction of the price

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of sugar was greatly stimulated by the bounties paid by the German government for the exportation of sugar. These made the profits of sugar production so great that the industry was developed throughout Germany in many new places for which it was specially suited. It is not likely that fifty years of production without a bounty would have done so much for cheapening the price of sugar as the bounty-paying policy has done in the last ten years. The only objection that Mr. Wells can raise to this transference of the production of sugar from the South to the North, is that "natural" production has been destroyed. It is not, however, the beet-sugar production that has destroyed "natural" production, but the ignorance of the people in semi-tropical regions. Their crude methods prevented any reduction in the price of sugar so long as the whole world depended upon them for its production. The interference of Germany with "natural" production will in the end also be of the greatest advantage even to the semi-tropical peoples, for it has broken down the social conditions which kept the industries of those countries stationary. New methods must now be inaugurated by them in order to compete with the cheaper sugar of the North; and this means not only the introduction of capital but also the increase of intelligence and security on the part of the people.

Mr. Wells is also greatly mistaken in his supposition that the taking off of the bounties on the part of European nations would cause the production of beet sugar to become unprofitable and compel a return to the "natural" production of Southern regions. A still further reduction of the price of beet sugar can be made, and still it will hold its own in the world's market. There have been many new regions opened up to the production of sugar to which the beet is well adapted and from which this new industry will not be driven until a much lower price prevails than we now have. It must be kept in mind that the beet is produced upon the most valuable land in Germany and that the rent of this land is still very high. Much more rent is paid for producing the beet than could be obtained from any other crop, and in the reduction of this rent there is

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a possibility of a much lower price for beet sugar. The present difficulties in which so many of the German producers are now involved arise largely from the high price which they have paid for the land upon which the sugar is produced. It is easy to see that if a producer bought his land before the serious fall in the price of land which has recently taken place in Germany, he would become involved and probably fail even though the production of sugar was of itself profitable. Under such adverse conditions there will of course be many failures, but the new owners of the land and of the factories will not cease to produce so long as they get as much from their land and from their factories as is obtained in other industries.

For these reasons the introduction of the sugar beet has been a great advantage not only to Germany but to the whole world. We now have a bar to any future rise in the price of sugar. Semi-tropical regions can never again exact that price for sugar which they formerly obtained. They may in the distant future, it is true, displace the German production, but it will be only after modern civilization has carried its benefits to the peoples of all these lands and their intelligence and the quantity of capital they use have become equal to that employed by the German people.

The peculiarities of Mr. Wells' views, as well as his way of presenting facts so as to make them tally with his position, are perhaps most clearly seen in his discussion of the production of iron and steel in America. In the body of Mr. Wells' book he devotes much space to the comparison of European with American prices in order to show the cost of the tariff to the American consumer. His method of reasoning is very simple: it consists in taking the price of the commodity on the English market and comparing it with the price on the American market. Then he estimates the burden of the tariff to the American consumer by the difference between the two prices. The difference in the price of pig iron in America and England, according to Mr. Wells, is seven dollars a ton, and the burden of the tariff upon the American consumers is measured in dollars by multiplying the amount of pig iron consumed by

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seven. In the same way he makes out that the production of steel in America costs American consumers fifty-six million dollars a year, and that the loss to the public for ten years from this tax would more than supply the whole capital now invested in the production of steel. Besides this fallacious way of estimating the burden of the tariff, there is another fallacy into which free traders are sure to fall. It is now too late to expect that the American people will ever consent to the destruction of their leading industries, and hence it devolves upon the advocates of free trade to show that American production would not be reduced if the tariff was taken off. On the one hand they must prove that the tariff is added to the price paid by consumers and on the other hand that production in America would not be less without a tariff. These two fallacies are both plausible and, when used with skill, are quite effective, but it will not do to bring them into too close connection. This error in judgment Mr. Wells has committed (*vide* his appendix), and the result may be a surprise even to Mr. Wells himself. The facts which he brings forward are very interesting and of especial importance because they are vouched for by so good a free-trade authority as Mr. Wells. He shows that the production of steel in America is now so great that the additional quantity needed by America could not be produced in England without a great increase in the price of materials in Great Britain and on the Continent. The result, then, of the taking off of the tariff in America would not be a reduction of the price of iron and steel in America to that of Europe, but a rise of the price in Great Britain and elsewhere throughout the world. But if this is true, what about Mr. Wells' method of estimating the burden of the tariff? Because the difference between American and English prices of pig iron is seven dollars a ton, does it follow that the burden of the tariff upon the American consumers is seven dollars for each ton if there would be a great rise in the price of pig iron in England in case the tariff were taken off? And is the burden of the tariff upon steel products to be estimated at fifty-six million dollars a year if a like increase in the price of steel would result from an increased demand for

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steel from Europe? From Mr. Wells' reasoning it would seem that the effect of a free-trade policy in America as regards iron would be an increase in the price of European iron to the American price without any reduction of the cost of iron to the American consumer. Is this not, however, a concession of the very point which American protectionists have always emphasized, and does it not prove that in reality the tariff on iron and steel is of no disadvantage to American producers even though there is at the present time a marked difference in the price of commodities? Mr. Wells does not show any means by which we can participate in the lower prices of iron in England, and hence there is no way in which a free-trade policy would be of advantage to consumers in America. But this is not all. Look at the injury Mr. Wells would do to England and the rest of the world in order that the free-trade policy may be inaugurated in America. He is willing to cause a heavy advance in the price of iron throughout the whole world, not temporarily, as some protectionists have advocated, but permanently. "For all time" is the term which he uses. If this result would follow from free trade, and there seems to be a good basis for Mr. Wells' opinion, we have a double reason for advocating protection. Protection does us no harm at least, and does consumers in all parts of the world a great advantage in keeping the price of steel and iron in foreign markets much below what it would be if the mines of Europe endeavored to supply American markets.

As free traders so often emphasize the moral point of view, it is well in this connection to notice the moral of Mr. Wells' position. Is it not a most selfish policy to create a high permanent price for iron all over the world merely for the pleasure of making production natural and trade free in America? Protectionists have often advocated higher prices, but they have at least deluded themselves with the notion that an ultimate fall in prices would follow. They have never plotted to raise prices throughout the whole world and thus check all industrial progress. It is reserved for free traders to get happiness by such

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means. The motive of some protectionists is very apparent; but who among them has been moved by as low a type of morality as that which is coiled up in the position of Mr. Wells?

We have now presented enough from Mr. Wells' book to show clearly his methods of reasoning and the class of facts upon which he bases his doctrine. His chief errors seem to lie in the fact that he has entered upon the investigation of economic problems with preconceived ideas not fitted to the economic conditions of the present day. All his arguments are based upon these preconceived notions, and the facts are so arranged that they illustrate and even seem to demonstrate his point of view. The great changes in economic doctrine that have taken place throughout the last century have had no influence upon Mr. Wells. We should have to go back before the time of Ricardo and Malthus to find a state of economic doctrine and ideas which would harmonize with the positions he takes. He seems continually to have in mind the time of Adam Smith, and he always emphasizes that point of view which Adam Smith makes prominent. He does not even seem to have studied the literature of the later periods nor that of his opponents of the present day. He is not conscious that there has been a great change in the doctrines of protectionists since the time of the mercantile school, against which Adam Smith wrote so earnestly. By reading ancient free-trade literature instead of modern protectionist books, he has made himself believe that the protectionists of the present day take the same position and have the same conception of economic society that was prevalent in the first part of the eighteenth century. Perhaps the most suitable comment upon Mr. Wells would be to say that he is an eighteenth century man commenting on nineteenth century facts. In Mr. Bellamy's *Looking Backward*, Mr. West, a nineteenth century man, wakes up at the end of the twentieth century to find a new society organized upon a vastly different basis. Yet there was so little change in the clothing during all this period that Mr. West found no inconvenience in the garments of the twentieth century. If we were to suppose that

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Mr. Wells could go backwards a century in the way that Mr. West moved forward, and were to find himself in a society of the economists of one hundred years ago, his ideas and economic doctrines would be in as full harmony with the society in which he would find himself as Mr. West's usages and tastes in the matter of clothing were in the society into which he entered. His companions would never discover from his reasoning or from his economic axioms or doctrines that they had a stranger in their midst who had lived all his life in a later century, and who was familiar with the wonderful changes in its economic conditions.

SIMON N. PATTEN.

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CITIZENSHIP OF THE UNITED STATES.

THE question has sometimes arisen: Who, upon the well-established principles of general law, are the citizens of a modern state? Not necessarily all of the inhabitants; for in the case of slavery (assuming, for the purposes of illustration, slavery still to exist in parts of the world more or less civilized), the slaves are inhabitants but not citizens; and in the case of subject peoples, like the Indian tribes in the United States, these subject peoples are inhabitants but not citizens; and in the case of resident representatives or citizens of foreign states and their families, said representatives or citizens and their families are inhabitants but they are not citizens. A comprehensive definition of citizenship in the abstract is that by Mr. Justice McLean in the celebrated Dred Scott case. He says: "The most general and appropriate definition of the term citizen is a freeman." This is true in the sense that all citizens are freemen, but not in the sense (alone important here) that all freemen are citizens. For foreigners in a state may be freemen but they are not citizens. Recognizing the distinction between the inhabitants of a state and its citizens, Mr. Caleb Cushing defines the latter as "the sovereign, constituent ingredients of the government," which of course only freemen, native or naturalized, can be. To the same effect speaks Mr. Chief Justice Waite in United States *vs.* Cruikshank. His words are:

> Citizens are members of the political community to which they belong. They are the people who compose the community and who in their associated capacity have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as their collective rights.

The question, however, may be seriously put, whether in this definition of citizenship by Mr. Cushing and the late chief jus-

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tice an important distinction has not been wholly overlooked. By predicating citizenship of those persons who constitute the "sovereign ingredients" of the state, who compose the "political community," — do they not restrict it to electors, to those invested with the suffrage? The political community in a state differs from the civil community. It is less numerically, but it comprehends greater privileges. Membership therein implies the possession not only of the civil rights, but of the privilege of participating in the sovereignty; whereas membership in the civil community alone implies merely the possession of the civil rights, *i.e.* the rights of personal security, of personal liberty and of private property. That neither Mr. Caleb Cushing nor Chief Justice Waite intended by his language thus to narrow the scope of citizenship is plain. The thought of each evidently was that sovereignty resides in the civil as well as in the political community. But the better opinion is otherwise. Thus says Sir Henry Maine:

> Nor again can sovereignty be said to reside in the entire community — an error to which French writers on public law seem especially liable. Their meaning may perhaps be that no body of individuals except the entirety of the people ought to be recognized as superior; but a dogma like this is something very different from the statement of a fact; and the truth is that no government corresponding with the description exists in the world. All polities are either monarchies or oligarchies, since even in the most popular women and minors are excluded from political functions.[1]

It would seem then that the citizens of a state would be more accurately defined as simply its members; it not mattering in the least whether they be of the political or of the civil community or of both. If of the first, they will belong to the class of active citizens, the voting and office-holding class; and if of the second, only to the class of passive citizens, the class of women and minors. Individuals belonging to neither of these classes are aliens. As such they may be either permanently resident in a state (as, for instance, a subject people), or only temporarily resident there (as, for instance, visiting foreigners),

[1] Papers, *etc.* (London, 1855), vol. 1, part 1, p. 30.

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or altogether non-resident. Moreover, "citizenship" and "state membership" being convertible terms, the citizenship of a parent may truthfully be said to attach immediately at birth to a child born out of the jurisdiction of the parent's state; for by a temporary absence from his state an individual manifestly does not lose his membership therein.

The fact that in certain commonwealths of our own Union aliens are permitted to vote for United States officials — in other words are permitted to belong to the political community in the United States — is an anomaly. It is a question discussed in the sequel, whether or not the United States is characterized by the further anomaly that persons not members of either its civil or its political community (the Indians) possess, under the fourteenth amendment to the constitution, the rights of citizenship; and by the still further anomaly, under the same amendment, that children born abroad, whose parents are citizens of the United States, are not themselves citizens thereof.

I.

Any discussion of United States citizenship naturally falls into two parts, corresponding to two historical periods: the first extending from the time of the adoption of the constitution of the United States to the time of the ratification of the fourteenth amendment thereto; and the second, from the time of the ratification of said amendment to the present. During the early part of the first period, citizenship of the United States was a theme not widely canvassed. The reasons for this are obvious. In the first place, citizenship of the several commonwealths was then a theme relatively of much greater importance. Little anxiety was felt for the maintenance of the privileges and immunities of citizenship of the United States, provided those of citizenship of the several commonwealths were maintained. In the second place, the existence of such a thing as citizenship of the United States, in the sense of a citizenship independent of the citizenship of the several commonwealths, was hardly admitted. The federal constitution contained no definition of citizenship of the United States. It contained the provision

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that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states," but this was simply a declaration to the several commonwealths that whatever rights they granted to their own citizens, those same rights, neither greater nor less, must they grant within their jurisdiction to citizens of other commonwealths. Under this provision a person going from one commonwealth into another acquired no other status than that held by the race or class to which he belonged in the commonwealth into which he went. Special privileges enjoyed by citizens in their own commonwealths were not secured to them in other commonwealths by this clause of the constitution.

That in some sense a citizenship of the United States existed was nevertheless apparent from the words of the constitution itself; such citizenship, though not defined in the constitution, being expressly recognized in the provision thereof that a person to be eligible to the position of representative in Congress must have been "seven years a citizen of the United States"; also in the provision that a person to be eligible to the position of a senator in Congress must have been "nine years a citizen of the United States"; and finally in the provision that no person shall be president of the United States "excepting a natural born citizen or a citizen of the United States at the time of the adoption of the constitution." Concerning citizenship of the United States, Story wrote in his commentaries:

> It has always been well understood among jurists in this country that the citizens of each state constitute the body politic of each community, called the people of the states; and that the citizens of each state in the Union are *ipso facto* citizens of the United States.

Upon an explanation so extremely guarded — not to say uncertain — had this question rested for forty years.

About the year 1830 began a time of more energetic discussion of citizenship of the United States. This discussion was incident to that of a broader theme, namely, the nature of the Union; but it was none the less thoroughgoing, at least on the side of state rights. The position taken by that side was

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that the individual was a citizen of the United States *only* as he was a citizen of some one of the several states or territories; in other words, that there was no such thing under the constitution as a citizenship of the United States independent of citizenship of the several commonwealths. Said Mr. Calhoun in his speech on the "force bill," delivered in 1833:

> If by citizen of the United States he [Senator Clayton, of Delaware] means a citizen at large, one whose citizenship extends to the entire geographical limits of the country without having a local citizenship in some state or territory, a sort of citizen of the world, all I have to say is that such a citizen would be a perfect nondescript; that not a single individual of this description can be found in the entire mass of our population. Notwithstanding all the pomp and display of eloquence on the occasion, every citizen is a citizen of some state or territory, and as such, under an express provision of the constitution, is entitled to all privileges and immunities of citizens in the several states; and it is in this and no other sense that we are citizens of the United States.[1]

A modification of this theory of the state-rights school concerning citizenship of the United States was introduced by Mr. Justice Curtis, of the United States Supreme Court, in his dissenting opinion in the Dred Scott case, decided in 1857. Mr. Curtis took the bold position that citizenship of the United States was dependent entirely upon citizenship of some one of the several states as such. In this he went beyond Mr. Calhoun, who conceded citizenship of the United States in the case of individuals already citizens, not merely of states as such, but of territories. Mr. Curtis's language is:

> The constitution having recognized the rule that persons born within the several states are citizens of the United States, one of four things must be true:
>
> (1) That the constitution itself has described what native-born persons shall or shall not be citizens of the United States; or
>
> (2) That it has empowered Congress to do so; or
>
> (3) That all free persons born within the several states are citizens of the United States; or
>
> (4) That it is left to each state to determine what free persons born within its limits shall be citizens of such state and thereby be citizens of

[1] Works II, 242.

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the United States. . . . The last of these alternatives, in my judgment, contains the truth. . . . It must be remembered that, though the constitution was to form a government, and under it the United States of America were to be one united sovereign nation to which loyalty and obedience on the one side, and from which protection and privileges on the other, would be due, yet the several sovereign states, whose people were then citizens, were not only to continue in existence, but with powers unimpaired, except so far as they were granted by the people to the national government.

Among the powers unquestionably possessed by the several states was that of determining what persons should and what persons should not be citizens.

Mr. Calhoun and Mr. Curtis agreed in the opinion that the power of Congress, under the constitution, "to establish an uniform rule of naturalization" was simply the power "to remove the disabilities of foreign birth;" the several commonwealths being at perfect liberty to determine in every instance whether or not the individual from whom such disabilities had been removed should become a citizen. This view directly conflicted with the view expressed by Mr. Chief Justice Marshall, in 1832, in Gassies *vs.* Ballon, *viz.*, that a (naturalized) citizen of the United States residing in any state of the Union was a citizen of that state. For, according to Marshall's view, naturalization by the United States and residence within a state were of themselves sufficient to make the naturalized person a citizen of any one of the several states.

Nowhere more clearly than in these respective views of Curtis and Marshall appears the irreconcilable difference which obtained between the advocates of state rights and their opponents on the question of citizenship of the United States. For the former, the primary consideration was always the several states; for the latter, the United States. In the opinion of the one, state citizenship being given, citizenship of the United States ensued as an incident; and in the opinion of the other, citizenship of the United States being given, the ensuing incident was state citizenship. In the contest between the two schools, however, this circumstance was noticeable: the advocates of state rights were as a rule able to make plain what in their judgment

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was meant by the expression, citizenship of the United States; whereas what this expression meant to their opponents these opponents themselves were at no small loss to determine.

In all this the War of the Rebellion and the necessity consequent thereon of some legislation investing the negro race with citizenship, both state and national, produced a change. The believers in a citizenship of the United States which was independent of the citizenship of the several states — a primary United States citizenship, such as that named by Chief Justice Marshall in Gassies *vs.* Ballon, to which state citizenship was a mere incident — had their opportunity and proceeded to improve it. In January, 1866, Senator Lyman Trumbull, of Illinois, introduced in the Senate a bill — afterwards famous as the "civil rights act" — which among other things declared:

> All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are citizens of the United States; and such citizens of every race and color without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right in every state and territory in the United States to make and enforce contracts, to sue, be parties and give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as enjoyed by white citizens.

Commenting on the above, Mr. Trumbull said:

> But, sir, what rights do citizens of the United States have? To be a citizen of the United States carries with it some rights; and what are they? They are those inherent fundamental rights which belong to free citizens or freemen in all countries, such as the rights enumerated in this bill; and they belong to them in all the states in the Union. The right of American citizenship means something.[1]

And again:

> What are they [*i.e.* the rights of a citizen of the United States]? The right of personal security, the right of personal liberty, and the right to acquire and enjoy property.

[1] Congressional Globe, 1st Sess. 39th Cong. p. 1757.

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The side of state rights, in the debate on Mr. Trumbull's bill, was ably represented by Mr. Reverdy Johnson, of Maryland. He took a position on the question of citizenship of the United States which he declared to be identical with that of Mr. Justice Curtis in the Dred Scott case. Thus, when Mr. Trumbull said:

> I understand him [Mr. Johnson] to assume the position that even now, since the abolition of slavery, it does not follow that persons born in the United States and born free are citizens of the United States; and consequently that it is not competent for Congress by law to make them citizens. Did I understand the senator correctly?

Mr. Johnson responded: "Yes, sir, I maintain the doctrine of Judge Curtis."[1] However, on being pressed by Mr. Trumbull to explain his statement of some days back that, slavery abolished, the negroes were just as much citizens of the United States as though slavery had never existed, he conceded that, "so far as the United States are concerned, all persons born within the limits of the United States are to be considered as citizens, and that without reference to the color or race; after the abolition of slavery, the negro stands precisely in the condition of the white man."[2] What he contended for, he said, was that citizenship of the United States, in consequence of birth, did not make the party a citizen of the state in which he was born unless the constitution and laws of the state recognized him as a citizen; that the status of a citizen of the United States, not at the same time a citizen of one of the states, differed from the status of a citizen of the United States who as such should be a citizen of the state of his residence.

In many respects this was true; but, as will be apparent to every one, it was not the doctrine of Justice Curtis — not the doctrine which Mr. Johnson had maintained in his speech, and which he had admitted that he had maintained in reply to the question by Mr. Trumbull. Mr. Johnson's doctrine was in fact a modification both of the doctrine of Mr. Calhoun and of that

[1] Congressional Globe, 1st Sess. 39th Cong. p. 1779.
[2] *Ibid.* p. 1780.

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of Justice Curtis. It postulated a citizenship of the United States which was independent of a citizenship of a state, and in so far was identical with the doctrine of Mr. Trumbull. Where it differed from Mr. Trumbull's doctrine was in what it further postulated, *viz.*, a citizenship of the United States which was not only independent of state citizenship but distinct and separate therefrom in its privileges and immunities. This involved a denial of Mr. Trumbull's assertion that, citizenship of the United States being given, state citizenship, with its privileges and immunities, flowed therefrom as an incident, and that it was by virtue of his citizenship of the United States that the individual possessed the rights of personal security, personal liberty and private property.

An interesting and withal somewhat difficult question concerning citizenship of the United States arose in the debate on the civil rights bill. The question regarded the interpretation of the naturalization clause in the constitution, and was this: Supposing the negro not to acquire citizenship through the mere removal of the disabilities of slavery (as is the opinion of many), can he be invested with it under that clause of the constitution which authorizes Congress "to establish an uniform rule of naturalization"? The contention by Mr. Trumbull was that he could, for the reason, first, that "a collective naturalization may take place of a class of persons, natives of the country or otherwise, and who, without any act on the part of the individuals, may be made citizens;"[1] and for the reason, second, that specific instances of such collective naturalization could be named. Certain Choctaw Indians were made citizens by treaty, September 27, 1830; certain Cherokee Indians were made citizens by treaty, December 29, 1835; and every member of the Stockbridge tribe of Indians was made a citizen by act of Congress, March 3, 1843. Besides these instances of a collective naturalization of natives, Mr. Trumbull cited some of a collective naturalization of foreigners by annexations of territory, as in the case of the inhabitants of Louisiana, Florida and Texas.

[1] Lawrence's Wheaton on International Law, p. 899.

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Other senators, among them Mr. Johnson, did not concur in the opinion of Mr. Trumbull that the negro could be invested with citizenship by naturalization. To them, naturalization, in the sense of that word in the constitution, was simply the removal of alienage according to some uniform rule. The negro was not an alien and hence could not be naturalized. The same thing was said concerning the Indian. As for the inhabitants of Louisiana, Florida and Texas, they in each instance became citizens either by treaty or special act of Congress whereby their alienage was removed, but not in accordance with any uniform rule and therefore not by naturalization.

Those who suggested that the negro could not acquire citizenship through the simple removal of the disability of slavery did so on the ground, largely, that the Dred Scott decision, which denied citizenship to all free persons of color in the United States, descendants of slaves, still stood as a precedent for judicial action. The arguments of this class of persons, reinforced by those of that class who did not regard the negro as in a situation to be naturalized, led to the insertion in the fourteenth amendment of a clause declaring who are citizens of the United States. This amendment originated in the House of Representatives. In the form in which it came to the Senate, the now familiar words: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside" were not a part of it. These words, with the exception of "or naturalized," were proposed as an amendment by Senator Howard, of Michigan. "They settle," said he, "the great question of citizenship and remove all doubt as to what persons are or are not citizens of the United States. This has long been a great desideratum in the jurisprudence and legislation of this country."[1] So far as the negro was concerned, Mr. Howard was clearly correct in his statement that by his amendment (which completely annulled the Dred Scott decision) the great question of citizenship was relieved of doubt. Concerning the

[1] Congressional Globe, 1st Sess. 39th Cong. p. 2890.

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Indian, however, as much could not properly be said; for the phrase, "persons subject to the jurisdiction thereof," *i.e.* of the United States, could very reasonably be interpreted to include the Indians. Impressed with this, Senator Doolittle, of Wisconsin, moved to amend Mr. Howard's amendment by inserting after the word "thereof" the words "excluding Indians not taxed," remarking that the senator from Michigan, he presumed, did not intend by his amendment to include the Indians.[1] And by Mr. Trumbull, who earnestly opposed the motion of Mr. Doolittle, the only reason given why Mr. Howard's amendment did not include the Indians was that "subject to the jurisdiction" of the United States meant "subject to the complete jurisdiction" of the United States, which the Indians were not; because the government of the United States did not pretend to take jurisdiction of murders and robberies and other crimes committed by one Indian upon another. Said he: "It is only those persons who come completely within our jurisdiction, who are subject to our laws, that we think of making citizens."[2]

Since the passage of the act of 1885 giving the courts of the territories and of the United States jurisdiction of offences committed by the Indians against one another, and since the Supreme Court's decision in United States *vs.* Kagama in 1886, sustaining said act, the force of the contention by Mr. Doolittle and others is perhaps more apparent.

In view of the later events, particularly of the decision in the Slaughter House cases, it is not a little singular that in all the discussion that took place in Congress, both on the civil rights bill and the measure known as the fourteenth amendment, it occurred to hardly any one to question the correctness of Mr. Trumbull's repeated assertion that citizenship of the United States clothed the individual with the rights of personal security, personal liberty and private property, — those rights which are in their nature fundamental and which are possessed by freemen the world around. That clause of the measure under consideration which declared that "no person shall abridge the

[1] Congressional Globe, 1st Sess. 39th Cong. p. 2890. [2] *Ibid.* p. 2893.

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privileges or immunities of citizens of the United States," a consideration of which would naturally have led to some discussion of the relative character of the privileges and immunities of citizens of a state and of the United States, was not debated at all.[1] Mr. Reverdy Johnson, it is true, discriminated between "the status of a citizen of the United States, who as such should be a citizen of some one of the several states," and that of a citizen of the United States who should not be a citizen of one of the states — a distinction involving all that was afterwards elaborated in the definition of citizenship of the United States given by the United States Supreme Court in the Slaughter House cases. But this he did only under protest, as it were, and in order to reconcile statements otherwise contradictory. His views concerning citizenship were professedly those of Mr. Justice Curtis in the Dred Scott case.

II.

By the adoption of the fourteenth amendment to the federal constitution, two points were placed beyond controversy:

(1) That citizenship of the United States depends in no way upon citizenship in any state or territory, but merely upon birth in the United States coupled with subjection to the jurisdiction thereof, or upon naturalization.

(2) That the negro is a citizen of the United States.

There are others than the negro, however, whose status as to United States citizenship has perhaps been affected by the adoption of this amendment. The language of the amendment

[1] Mr. Hendricks: "Then I ask what it means when we speak of abridging the rights and immunities of citizenship. It is a little difficult to say and I have not heard any senator accurately define what are the rights and immunities of citizenship."

Mr. Reverdy Johnson: "I am decidedly in favor of the first part of the section which defines what citizenship shall be, and in favor of that part of the section which denies to a state the right to deprive any person of life, liberty or property without due process of law, but I think it quite objectionable to provide that no state shall make or enforce any law which shall abridge the privileges or immunities of citizenship of the United States, simply because I do not understand what will be the effect of that." — Congressional Globe, 1st Sess. 39th Cong. pp. 3039–3041.

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is: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States," *etc.* Does this mean that United States citizenship attaches, on the one hand, to every individual born subject to the national jurisdiction; and on the other, only to individuals born subject to that jurisdiction? If so, the door is opened to the claim, first, that the Indians are citizens; for, as already pointed out, an act passed in 1885, giving to the courts of the territories and of the United States jurisdiction over offences committed by the Indians against each other, has recently been upheld by the United States Supreme Court;[1] and, to the claim, second, that children born abroad of citizens of the United States are not themselves citizens; for such children are not born "subject to the jurisdiction of the United States." The question whether or not the language of the fourteenth amendment defining citizenship of the United States is to be construed literally and strictly remains as yet undetermined. The United States Supreme Court has not pronounced upon it, and meanwhile opinions differ. Says Mr. A. C. Freeman, editor of the *American Decisions*:[2]

> By the common law, all children born abroad are citizens of the United States if their fathers were at the time American citizens. . . . But such children would not now be citizens if the fourteenth amendment is held to furnish an exhaustive and comprehensive definition of citizenship. That it does furnish such a definition is intimated by Mr. Justice Miller in the Slaughter House cases and by Mr. Justice Field in his dissenting opinion in the same cases. . . . This construction is certainly unfortunate, but perhaps it is the only one which can be adopted.

[1] In the case of Elk *vs.* Wilkins, decided in 1884, the United States Supreme Court held that an Indian, who was born a member of a tribe and who had never been taxed, was not a citizen of the United States within the meaning of the fourteenth amendment. The opinion, which was by Mr. Justice Gray, goes the length of asserting that a person born in the United States and born a member of an Indian tribe is not born "subject to the jurisdiction of the United States." From this opinion, as also from the judgment of the court, Justices Harlan and Wood strongly dissented. Since United States *vs.* Kagama, decided in 1886, the words, "subject to the jurisdiction of the United States," as applied to the Indians, must, it would seem, receive a more inclusive interpretation than was before given them.

[2] Note to Ludlam *vs.* Ludlam, 84 Am. Dec. 212.

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Says Mr. Justice Field in *In re* Look Tin Sing:[1] "Only those thus subject [to the jurisdiction of the United States] by their birth or naturalization are within the terms of the [fourteenth] amendment." Mr. Benjamin Abbott, however, thinks differently from Mr. Freeman and Judge Field and remarks as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. This appears at first sight as if it were intended as an exhaustive delineation of the persons who are citizens, so that no person not included in the description can be deemed to be one. And this effect has sometimes been imputed to it. We think, however, it ought not to be so understood. . . . All children heretofore born or hereafter born out of the United States, whose fathers were or may be at the time of their birth citizens of the United States, except children of fathers who never resided in the United States (acts of April 14, 1802, and Feb. 10, 1855), and any woman married to a citizen (act of Feb. 10, 1855) are declared to be citizens.[2]

Likewise contends Dr. Francis Wharton:

> The term "subject to jurisdiction" must be construed in the sense in which the term is used in international law as accepted in the United States as well as in Europe. And by this law the children born abroad of American citizens are regarded as citizens of the United States, with the right, on reaching full age, to elect one allegiance and repudiate the other, such election being final.[3]

Should the literal and strict construction of the language of the fourteenth amendment defining United States citizenship be finally held to be the correct one, the law of the United States respecting citizenship would undoubtedly be at variance with the principles both of the common law and of international law as set forth in the paragraph introductory to this article.

But the question: Who are citizens of the United States? is not the only question debated before the adoption of the fourteenth amendment which survived to later years. The question involved with it, namely: What are the privileges and

[1] S. C. 21 Fed. Rep. 905. [2] Law Dictionary, vol. 1, pp. 225, 226.
[3] Conflict of Laws, sec. 10.

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immunities of citizens of the United States? likewise survived. This question, however, received an answer from the Supreme Court of the United States in the Slaughter House cases, decided in 1873, and is therefore no longer open in the same sense with the question first referred to. By the Slaughter House decision the privileges and immunities appurtenant to citizenship of the United States were determined to be different and distinct from those appurtenant to state citizenship. The latter were described as those privileges and immunities which are fundamental in character;

> Which belong of right to the citizens of all free governments and which have at all times been enjoyed by citizens of the several states which compose the Union from the time of their becoming free, independent and sovereign; . . . [as, for example,] protection by the government; . . . with the right to acquire and possess property of every kind and to pursue and obtain happiness and safety, subject nevertheless to such restrictions as the government may justly prescribe for the general good of the whole.

In contrast with privileges and immunities such as these, the privileges and immunities of citizenship of the United States were described as merely those special and limited privileges and immunities arising from the special and limited scope, under the constitution, of the federal or United States authority. Examples were given as follows:

> To come to the seat of government to assert any claim upon that government, to transact any business with it, to seek its protection, to share its offices, to engage in administering its functions.
>
> Free access to its seaports, through which all operations of foreign commerce are conducted; to the sub-treasuries, land offices and courts of justice in the several states.
>
> To demand the care and protection of the federal government over life, liberty and property when on the high seas or within the jurisdiction of a foreign government.
>
> To peaceably assemble and petition for redress of grievances.
>
> The writ of *habeas corpus*.
>
> To use the navigable waters of the United States, however they may penetrate the territory of the several states.
>
> To become a citizen of any one of the several states by a *bona-fide* residence therein.

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That the privileges and immunities of citizenship of the United States were not held to include the fundamental rights of life, liberty and property was the cause of much criticism of the decision in the Slaughter House cases and of earnest protest against it. Without these rights, citizenship of the United States was deemed by many a status void alike of substantial rights and of honor.

Some idea of the revolutionary lengths to which the United States Supreme Court was thought to have gone, in the definition of citizenship of the United States given in the Slaughter House cases, may be gained from the expressions of Mr. Justice Field, Mr. Justice Bradley and Mr. Justice Swayne in their dissenting opinions. Said Mr. Justice Field:

> It [the fourteenth amendment] assumes that there are . . . privileges and immunities which belong of right to citizens as such and ordains that they shall not be abridged by state legislation. If this inhibition has no references to privileges and immunities of this character, but only refers, as held by the majority of the court in their opinion, to such privileges and immunities as were before its adoption specially designated in the constitution or necessarily implied as belonging to citizens of the United States, it was a vain and idle enactment, which accomplished nothing and most unnecessarily excited Congress and the people on its passage. With privileges and immunities thus designated or implied no state could ever have interfered by its laws, and no constitutional provision was required to inhibit such interference. . . . But if the amendment refers to the natural and inalienable rights which belong to all citizens, the inhibition has a profound significance and consequence.

Said Mr. Justice Bradley:

> I think sufficient has been said to show that citizenship is not an empty name, but that, in this country at least, it has connected with it certain rights, privileges and immunities of the greatest importance. And to say that these rights and immunities attach only to state citizenship, and not to citizenship of the United States, appears to me to evince a very narrow and insufficient estimate of constitutional history and the rights of men, not to say the rights of the American people.

Said Mr. Justice Swayne:

> The privileges and immunities of a citizen of the United States include, among other things, the fundamental rights of life, liberty and property,

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and also the rights which pertain to him by reason of his membership of a nation. . . . Without . . . authority [to secure the above enumerated rights and privileges] any government claiming to be national is glaringly defective. The construction adopted by the majority of my brethren is, in my judgment, much too narrow. It defeats by a limitation not anticipated the intent of those by whom the instrument was framed and of those by whom it was adopted. To the extent of that limitation, it turns, as it were, what was meant for bread into a stone.

That the decision in the Slaughter House cases defeated by a limitation not anticipated the intent of those by whom the fourteenth amendment was framed is doubtless true. The fact that Mr. Trumbull's interpretation of the scope of citizenship of the United States — an interpretation rejected by the court in these cases — was acquiesced in by virtually the whole of Congress shows it to be so. What the Supreme Court did by the Slaughter House decision was so to take advantage of the wording of the fourteenth amendment, in certain clauses, as to preserve to the several states at least some of those powers which they had for eighty years possessed, and without which their very existence, in any considerable sense, must terminate. Said Mr. Justice Miller, giving the opinion of the court:

Was it the purpose of the fourteenth amendment, by the simple declaration that no state should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned [*i.e.* of personal security, personal liberty and private property] from the states to the federal government? And where it declared that Congress shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the states? All this and more must follow, if the proposition of the plaintiffs in error be sound. . . . The argument, we admit, is not always the most conclusive which is drawn from the consequences urged against the adoption of a particular construction of an instrument. But when, as in the case before us, these consequences are so serious, so far-reaching and pervading, so great a departure from the structure and spirit of our institutions; when the effect is to fetter and degrade the state governments by subjecting them to the control of Congress; . . . when in fact it radically changes the whole theory of the relations of the state and federal governments to

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each other and of both these governments to the people; the argument has a force that is irresistible in the absence of language which expresses such a purpose too clearly to admit of doubt.

The stress laid by the court in the Slaughter House cases upon the distinct and separate character of citizenship of the United States and citizenship of a state suggests a query not raised or considered in those cases, *viz.:* Recognizing it as a fact that a person can be a citizen of the United States and at the same time not be a citizen of a state, is the converse of the proposition true? Can a person be a citizen of a state and at the same time not be a citizen of the United States? In other words, is it true, necessarily, that a citizen of a state is *ipso facto* a citizen of the United States? Let Mr. Benjamin Abbott reply. He says:

> If citizenship can, since the fourteenth amendment, be forfeited, as unquestionably it might be before; if a loss of citizenship may be imposed by a statute as a penalty for an offence; it would seem that, under possible legislation, a person convicted under an act of Congress imposing disfranchisement might cease to be a citizen of the Union, yet, because the offence was against the United States alone or because there was no corresponding penal law in his state, he might be deemed to continue a citizen of the state.[1]

But is it not possible in another way for a person to be a citizen of a state without being a citizen of the United States? Is it not within the power of a state to grant to an alien residing within its limits all the rights and privileges enjoyed by its native-born or naturalized citizens, so far as such rights and privileges are under the control of that state, — in other words, to naturalize an alien to the extent of its own exclusive jurisdiction? If so, he would be a citizen of that state, yet not a citizen of the United States; for he could only become the latter by complying with the requirements of some uniform rule of naturalization prescribed by the United States. Said the United States Supreme Court, through Chief Justice Taney, in the Dred Scott case:

[1] Law Dictionary, vol. 1, p. 226.

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We must not confound the rights of citizenship which a state may confer within its own limits and the rights of citizenship as a member of the Union. . . . He [a person] may have all the rights and privileges of a citizen of a state and yet not be entitled to the rights and privileges of a citizen in any other state. . . . Each state may . . . confer them [*i.e.* the rights and privileges of state citizenship] upon an alien or any one it thinks proper, or upon any class or description of persons, yet he would not be a citizen in the sense in which that word is used in the constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other states. The rights which he would acquire would be restricted to the state which gave them. . . . No state since the adoption of the constitution can by naturalizing an alien invest him with the rights and privileges secured to a citizen of a state under the federal government, although, so far as the state alone was concerned, he would undoubtedly be entitled to the rights of a citizen and clothed with all the rights and immunities which the constitution and laws of the state attached to that character.

But lest the preceding opinion from the Dred Scott case be unfavorably regarded by some on account of its source, a brief passage from Mr. John M. Pomeroy's *Constitutional Law* (paragraph 390) will be quoted. It is as follows:

While it is settled, then, upon principle, authority and continuous practice, that the Congress of the United States has exclusive authority to make rules for naturalization, it must not be understood that the states are deprived of all jurisdiction to legislate respecting the rights and duties of aliens. They may permit or forbid persons of alien birth to hold, acquire or transmit property; to vote at state or national elections, *etc.* These capacities do not belong to United States citizenship as such. Congress would transgress its powers were it to assume to make rules upon these subjects.

It is a question of some speculative interest, whether citizenship of the United States, as defined in the Slaughter House cases, existed prior to the adoption of the fourteenth amendment to the constitution or was created by it. If the views of Mr. Calhoun or of Mr. Curtis as to the scope of citizenship of the United States were, at the time expressed, well founded, citizenship of the United States was created by the fourteenth amendment. For, according to the views of each of these dis-

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tinguished men, local citizenship was the *sine qua non* of citizenship of the United States; whereas, according to the definition in the Slaughter House cases, there may be citizenship of the United States without any local citizenship whatever. Mr. Reverdy Johnson gave pointed expression to the views of those who, following out Calhoun and Curtis, deemed the fourteenth amendment to have created citizenship of the United States, when he said:

> I am, however, by no means prepared to say, as I think I have intimated before, that being born within the United States, independent of any new constitutional provision on the subject, creates the relation of citizen to the United States.[1]

The great weight of opinion, however, is to the effect that citizenship of the United States was not created but simply declared by the fourteenth amendment. Mr. Howard and Mr. Trumbull both so contended in the Senate; likewise Mr. Henderson, of Missouri, who said:

> Those persons who are to be made citizens by this amendment are the persons and none others who have ever been citizens of the United States, under a fair and rational interpretation of the constitution, since its adoption in 1789 [*sic*].[2]

It may properly be observed, in concluding, that there doubtless never has been a time in the history of the government when a person not either a negro or an Indian, born within the United States, whether a citizen of some state or territory or not, could not in a just case have secured for himself for the asking the protection of the federal power in his rights of safety and property, at least upon the high seas or in a foreign country. If so, citizenship of the United States, as now authoritatively defined, was not created by the fourteenth amendment to the constitution, but has always existed since the adoption of the constitution itself.

IRVING BERDINE RICHMAN.

[1] Congressional Globe, 1st Sess. 39th Cong. p. 2893. [2] *Ibid.* p. 3033.

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LOCAL GOVERNMENT IN PRUSSIA. II.

IN the preceding number of the POLITICAL SCIENCE QUARTERLY the attempt was made to trace very briefly the history of local government in Prussia during the present century and to sketch the prominent characteristics of the reform movement of 1872–1883. It was shown that for the purposes of local administration the country is divided into provinces — which in their turn are subdivided into government districts — and into circles. In each of these divisions are placed authorities, some charged with administrative business affecting the country as a whole, some with matters of purely local concern. It is now proposed to examine these authorities in detail and to consider how far the new organization guarantees to the people that self-government which was one of the main ends of the reform. The local authorities may be classified as provincial and circle authorities.

I. *Provincial Authorities.*

The historical development of institutions in Germany has brought about a partition in the work of administration. While in England the absolutism of the early Norman monarchy crushed out all local autonomy and reduced the divisions of the kingdom to the position of mere administrative circumscriptions, without juristic personality and without affairs of their own to manage, — administrative circumscriptions in which all administration was attended to by royal officers, — in Germany there were many important districts which were regarded as public corporations, having their own duties to perform and their own officers — not in any sense royal officers — to discharge these duties. During the period of greatest centralization these local corporations had a certain degree of autonomy and a certain sphere of action which was recognized as their own — as distinct from the sphere of action belonging to

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the central government. They had their own officers to attend to their own business. The central government, likewise, had its administrative districts — which often were not co-terminous with the districts of these local corporations — and its officers, who were charged with that part of the work of administration which was held to concern the country as a whole. As the purpose of the reform of 1872 was to decentralize the administration of government, this distinction of the two spheres of administrative work has not been abolished but has rather been accentuated. More matters have been recognized as belonging to the purely local administration of the provinces and circles. Prussia has therefore at the present time, contrary to the condition of things in England and in this country, on the one hand a well recognized sphere of local action in which the local corporations have considerable autonomy, and on the other hand a sphere of state action in which the central government, if it does not act directly, still has very large powers of control. The existence of these two spheres of action and, in some cases, of a separate set of authorities for each sphere, makes the system of local government very complicated, and its presentation a work of great difficulty. The reform of 1872 has endeavored to simplify matters: the divisions for the purposes of general state administration have in all cases been made co-terminous with the divisions for the purposes of local administration, and the authorities for the two spheres of administrative action have in some cases been consolidated into one authority. In the province, however, all attempts at such consolidation were unsuccessful; so that in our examination of the provincial authorities we must distinguish between what are called the *Behörden der allgemeinen Landesverwaltung*, *i.e.* the authorities for central administration, and the *Organe der Provinzialverbände*, *i.e.* the organs or authorities for local administration. Among the authorities for the general administration of the country are to be mentioned:

The Governor (*Oberpräsident*). This officer is appointed and dismissed by the king at his pleasure. He is a member of what is called the higher administrative service, *i.e.* he must

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have passed through the required training, receives a large salary and devotes his entire time to his work. He is thus a purely professional officer. He is the agent of all the executive departments of the central government at Berlin and, as such agent, must report to each of them every year and execute any commands which they may send him. These officers, according to the original intention of Stein and Hardenberg, were to be permanent representatives of the central government, and their decisions were to be regarded as the decisions of the ministers;[1] but at the time the late reform was undertaken they had obtained for themselves, as a result of later legislation and of administrative practice, the position of a hierarchical instance immediately between the central executive departments and the "governments" in the government districts, with the deplorable result that in many administrative matters there were five instances of appeal.[2] For this reason the demand was made that the office be abolished. But there were so many objections to complying with such a demand that it was decided to retain the office, assigning to it, however, the position which Stein and Hardenberg had originally marked out for it. The central executive departments were relieved of many matters of detail, and the decision of these matters in last instance was intrusted to the provincial governors. In several cases, it is true, the governors are still to be regarded as an intermediate instance in the administrative hierarchy between the ministers and the lower authorities; but their characteristic position is now that of permanent representatives of the ministers in the provinces, from whose decision there is no appeal. As representatives of the ministers in the provinces, the governors are intrusted with considerable discretion of action in times of extraordinary danger from war or other causes.[3] They exercise either in second or first instance (but always at the same time in last instance) very large powers of supervision over the actions of subordinate central officers and authorities, as well as over the administra-

[1] Memorial presented to the lower house of the Prussian legislature in January, 1875; cited in Stengel, Organisation der Preussischen Verwaltung, p. 317.

[2] *Ibid.* p. 318.

[3] Instruction of Dec. 31, 1825.

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tion of the local affairs of various important municipal corporations, such as the province, the circle and certain of the larger cities.[1] As representatives of the central government they also appoint the justices of the peace (*Amtsvorsteher*).[2] They attend to the administration of all business which interests the entire province or more than one government district. For example: they issue a long series of police ordinances;[3] supervise the churches;[4] transact all business which relates to an entire army corps;[5] act as the presidents of a series of provincial councils or boards, such as the provincial council, the provincial school board and the provincial board of health.[6]

The Provincial Council. Up to 1875, when the late reform was introduced into the provincial administration, the governor, himself a professional officer, transacted the business of the central government in the province unchecked in the performance of his duties by the control of any popular authority. But one of the main objects sought by the reform was the introduction of a lay element into the administration of affairs affecting the country as a whole. This end was attained by the formation of the provincial council. This body consists of the governor, as its president; a single councillor of a professional character, *i.e.* one who satisfies all the requirements for entrance into the higher administrative service, who is salaried and who devotes his entire time to his work; and five lay councillors, citizens of the province, *i.e.* ordinary citizens without any professional education and unsalaried. The professional councillor is appointed by the minister of the Interior, and his term of office is practically for life. The lay members of the council are appointed by the provincial committee — a popular body — from among the citizens of the province eligible for the position of member of the provincial diet. Their term of office

[1] Allgemeines Landesverwaltungsgesetz of July 30, 1883, § 10; Kreisordnung of 1872, § 177; Zuständigkeitsgesetz of July 26, 1880, § 7.

[2] K. O. of 1872, §§ 56–58.

[3] With the consent of the provincial council, of which later. A. L. V. G. §§ 137, 139.

[4] Loening, Deutsches Verwaltungsrecht, p. 83, with authorities cited.

[5] *Ibid.*

[6] Instruction of 1825, § 3; A. L. V. G. § 10.

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is six years.[1] In the organization of this body, it will be noticed, the lay element predominates. Provision is made for professional members simply in the hope that by reason of their knowledge and experience the business of the council may be more wisely and more quickly transacted.

The duties of the council are of three classes. In the first place it exercises a lay control over the action of the provincial governor, *e.g.* its consent is necessary for all his ordinances.[2] In the second place it acts as an instance of appeal from certain decisions of inferior authorities, such as the district committee.[3] In the third place it decides as an executive authority certain administrative matters; *e.g.* the number, time and duration of certain markets,[4] and questions relative to the construction of certain roads.[5] Of these duties, those of the first class are by far the most important, as it is through their performance that a popular lay control is exercised over the bureaucratic professional administration of central matters in the province.

The Government and the Government President. Each province is divided into from two to six government districts. At the head of each of these districts is a government (*Regierung*). This is composed exclusively of professional officers, *viz.* the president, several division chiefs, councillors and assistants. They are all appointed by the central government at Berlin and, like the governors of the provinces, belong to the higher administrative service.

The competence of the governments originally (and at the time of the late reform) embraced all matters of internal administration and all other matters, such as the finances and military affairs, in so far as these could be attended to at all by territorially limited authorities and in so far as special authorities had not been established to attend to them.[6] This last was not often the case. Separate authorities had indeed been established for the administration of the customs, but this was the

[1] A. L. V. G. §§ 10–12.
[2] A. L. V. G. § 137; Z. G. § 51.
[3] A. L. V. G. § 121.
[4] Z. G. § 127.
[5] Stengel, Organisation der preussischen Verwaltung, p. 435.
[6] Ordinance of Dec. 26, 1808.

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most important instance. In general all matters of central administration attended to in the localities were attended to by the governments. They were by far the most important administrative authorities in the entire Prussian system; and it was due to their excellent organization and wise action that the great economical reforms of the beginning of the century had been successfully carried through. They acted under the direction of the central authorities at Berlin or that of the representatives of the central authorities in the provinces, *viz.* the provincial governors. Finally, in addition to the actual administrative duties which they performed, they exercised a control over the various authorities of the central administration immediately subordinated to them and over the various local public corporations.

With the introduction of the reform measures, however, the importance of the governments has somewhat decreased, owing to the establishment of other more popular authorities and to the modification which thereby became necessary in their own organization. In the "district committee" a lay authority was established in the government district[1] similar to the provincial council in the province. This innovation reduced the government so much in importance that it was felt advisable to abolish its most important division, that of the interior, which had charge of the police administration (*i.e.* the issue of police ordinances and orders) and of the supervision of the inferior authorities both of the central and of the local administration. All of these duties were assigned either to the government president, acting alone or under the control of the district committee, or to the district committee as such. The government president had been before this simply the president of a board in which lay the real power of decision. By the reform he was raised to the position of an officer who has in certain cases the power of independent action, although in many cases he acts under the control of the district committee. For all other matters within the competence of the government the old organization is the same as before; *i.e.* in school, tax and church matters the gov-

[1] A. L. V. G. § 153.

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ernment still acts as a board of which the government president is the presiding officer.

The government president thus occupies a double position. He is either an officer with independent powers of action, or he is the presiding officer of a board in which lies the real power of decision. But wherever he has independent powers of action, he is subjected to the control of the lay district committee, of which he is at the same time the president. The result is an extremely complicated organization — which, however, answers the purposes sought by the reform. The matters left in the competence of the existing divisions of the government are matters which are not thought to be proper subjects for popular administration. The management of the domains of the state, of the state taxes and of education (*i.e.* of its pedagogical side) and the control over the churches are not regarded as subjects in which a popular control would lead to advantageous results; but the management of police matters and the supervision of the subordinate authorities, particularly of the local corporations, are matters in which it is particularly desirable that the people should have some influence.

The District Committee. Mention has already been made of the district committee as the body through which the popular lay influence has been introduced into the administration. It is to the government president just what the provincial council is to the provincial governor. It is formed of the government president, as its presiding officer, and six councillors.[1] Two of these are professional in character, are appointed for life by the king, and must be qualified the one for the judicial service, the other for the higher administrative service. One of these professional councillors is, at the time of his appointment, designated as the deputy of the government president in his capacity as the presiding officer of the committee: he is called the administrative court director, and presides over the deliberations of the committee when it acts, as it may, as an administrative court. The other four members are lay members and are elected by the provincial committee from among the

[1] A. L. V. G. § 28.

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inhabitants of the district not professional officers. It will be noticed that the character of this committee is the same as that of the provincial council. It is distinctively a lay authority, although it has a sufficient number of professional members to ensure the rapid and wise discharge of business.

The district committee subserves in the main the same purpose as the provincial council, but its competence is more extended. Its main function is to exercise a control over the actions of the government president, so that the administration may be made popular in character.[1] Thus all police ordinances, the issue of which is the chief function of the government president when acting alone, need the consent of the district committee.[2] But this committee has positive functions also. In many cases it acts in first instance; *e.g.* it exercises a large supervision over the acts of inferior authorities and of municipal corporations, especially of the large cities. It has also an appellate jurisdiction. This is of two kinds, one administrative and the other judicial. In the first case the committee acts simply as the hierarchical superior of the lower authorities; the procedure before it is quite informal; and its decision, in making which it is governed mainly by the question of expediency, is incorporated into a resolution. Acting in this capacity, it is presided over by the government president. In the second case, *i.e.* when it hears appeals of a judicial character, it is regarded as an administrative court and is presided over by the administrative court director. The procedure before it is then quite formal in character; in making its decision it is governed by the law alone; and its decision takes on the form of a judgment, from which appeal may be taken to the superior administrative court at Berlin. In what cases it acts as an administrative authority, and in what other cases it acts as an administrative court, is decided by the statutes.[3] The general principle would seem to be that where rights of individuals are involved, the committee acts (hears appeals) as an administrative court. In its double capacity of authority and court, its jurisdiction is very large; and its establishment has done much to weaken the

[1] Z. G. § 13. [2] A. L. V. G. § 139. [3] Stengel, pp. 330, 415.

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importance of the "government," which was absolutely professional in character, and to establish that lay control over the administration which was so much desired by the leaders of the reform movement.

Such are the provincial authorities charged with that part of the administration known as the central administration (*allgemeine Landesverwaltung*). The governor and the provincial council represent the central authority; their action may be regarded as the action of the ministers. The government, the government president and the district committee are regarded as subordinate to the governor and the provincial council, by whom their action is largely controlled. In both instances, the salient point of the new system is the subjection of the professional administration — an administration which, before the late reform, was wholly bureaucratic — to an extensive lay control.

Matters of purely local interest to the province — matters which the law recognizes as falling within the domain of provincial autonomy — are attended to by a second class of authorities, *viz.* the organs of the provincial municipal corporation (*Organe des Provinzialverbandes*). These authorities are the direct successors of the old feudal estates of the province which have come down from the middle ages. The original Stein-Hardenberg legislation did very little to develop them: it was felt that the feudal elements were too strong in them to permit of any healthy development. After Hardenberg's death they received increased powers. They were so organized, however, as to put their entire control into the hands of the large owners of land. The main purpose of the reform movement has been so to reorganize them that they might be entrusted with a large part of the work which was then being done by the central administration and which was susceptible of decentralization. The main point in this reorganization is the provision for the representation of all classes of the people within the province. The old system of representation was completely done away with and new authorities were added. This was done by the province law of 1875. This law formed:

A Provincial Diet or legislature. This is composed of rep-

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resentatives from each of the circles into which the province is divided, the number of representatives depending upon the population of the circles.[1] These representatives are elected by the circle diets of the rural circles and the municipal authorities of the urban circles. The latter, it will be remembered, are all cities of 25,000 or more inhabitants.[2] This method of election assures the larger cities a fair representation in the provincial diet; and the method of electing members of the diets of the rural circles, as will be shown, is such as to guarantee to the smaller cities and the other social interests a voice in the selection of the members of these diets and, as a result, representation in the provincial diet also. The term of office of the members of the provincial diet is six years; and the qualifications of eligibility are German citizenship, residence in the province or the possession of landed property therein for at least a year, good moral character and solvency.[3]

The diet is called together by the king once in two years and as many other times as its business makes its meetings necessary.[4] The governor of the province attends to this matter for the king and, as the royal representative, opens its sessions and has the right to speak therein.[5]

The functions of this body relate almost exclusively to the purely local matters of the provincial administration. It decides what local services shall be carried on by the provincial corporation in addition to those which have been positively devolved upon it by law, and it raises the funds necessary for the support of the provincial administration.[6] Its decisions, says Dr. Gneist,

> affect the construction and maintenance of roads; the granting of moneys for the construction and maintenance of other means of public communication; agricultural improvements; the maintenance of state almshouses, lunatic asylums, asylums for the deaf and dumb and blind and others, artistic collections, museums and other like institutions. . . . The provincial diet votes the provincial budget, creates salaried provincial offices and deliberates upon provincial by-laws.[7]

[1] Provinzordnung §§ 9, 10.
[2] *Ibid.* §§ 14, 15.
[3] *Ibid.* § 17.
[4] *Ibid.* § 25.
[5] *Ibid.* § 26.
[6] *Ibid.* §§ 34–44.
[7] Gneist, in *Révue générale du droit et des sciences politiques*, Oct. 1886, p. 262.

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These by-laws, it must be added, simply regulate minor points in the organization of the province which have not been already fixed by law, such as the details regarding the elections. They must be approved by the king.[1] In addition to the duties imposed upon the province by law, the diet may assume such other duties as it sees fit which are not in direct opposition to the purposes of the provincial organization.[2] Finally, the diet elects all the executive officers of the province regarded as a municipal corporation.[3]

From this description of its duties it will be seen that the provincial diet determines largely what the character of provincial administration shall be. The law of course imposes certain duties upon the province which it must perform and which it may be compelled to perform, but the law does not limit its competence. On the contrary, the law allows it to do almost anything which falls within the scope of what is recognized as proper for provincial administration. There will naturally be great variety in the various provinces. A province situated on the seacoast needs different institutions from one that lies inland. The social conditions in the various provinces are so different that great differences in their institutions will result from these causes alone. The manufacturing provinces in the West will need institutions quite other than those of the agricultural provinces of the East. Under the new system, which imposes upon the province much of the work formerly done by the central administration and leaves it free to do as much more as it will, the widest opportunity is given for development in accordance with particular local needs.

The Provincial Committee. This is the executive authority of the province as a municipal corporation. The number of its members varies, according to the by-laws of the different provinces, between seven and thirteen.[4] They are elected by the diet from among those citizens of the empire who are eligible to the provincial diet.[5] The term of office is six years, half of the members retiring every three years.[6] The members of

[1] P. O. § 119. [2] Loening, Deutsches Verwaltungsrecht, p. 219.
[3] P. O. § 41. [4] *Ibid.* § 46. [5] *Ibid.* § 47. [6] *Ibid.* § 48.

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this committee (and the same rule applies to the members of the provincial diet) receive no pay or salary of any kind for the performance of their duties: the province only repays their necessary expenses.[1]

The duties of this committee are to carry on the administration of the province in accordance with the general principles laid down by the provincial diet in its resolutions.[2] Its subordinate executive officer, on whom the detailed or current administration falls, is the provincial director, who is elected by the diet and must be approved by the king, and who is a salaried officer.[3] His position is that of a superintendent of the entire provincial civil service for purely local matters. He has no discretionary powers: the provincial committee is the discretionary executive of the province, and the director simply carries out its decisions. Service as provincial officer, it should be added, is never obligatory.

Such are the officers of the province as a municipal corporation. The original draft of the bill which afterwards became the provincial law made this provincial organization less complicated than it now is, providing that the provincial committee should also perform the duties which have been devolved upon the provincial council; but the Conservative party in the House of Lords, whose interests were at stake, felt that this plan would not allow them sufficient independence in the management of purely provincial affairs, and insisted upon a complete separation of the general and local functions of administration in the province. The result was the formation of the separate authorities described above.[4]

Before closing this account of the administration of the province, it should be noted that the greater part of the revenue of the province as a municipal corporation comes from the funds or grants in aid which were given by the central government to the province at the time of the reorganization of the provincial administration. The purposes for which such grants shall be spent are designated in the laws. In order, however, to permit the provinces to develop in accordance with their particular

[1] P. O. § 100. [2] *Ibid.* § 45. [3] *Ibid.* § 87. [4] Stengel, p. 150.

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needs, the law provides that the provinces may raise other money by levying taxes.[1] These taxes shall consist of lump sums of money, which the circles forming part of the province are to pay into the provincial treasury, and whose amount is to be fixed in accordance with the amount of direct taxes paid to the central government by the people residing within the circles.[2] The circle and not the individual is the taxpayer in the provincial system of finance, just as the circle and not the individual is the voter for representatives to the provincial diet. In order, however, to prevent the provincial diet from overburdening the circles, it is provided that where the province shall demand from the circle more than fifty per cent of the amount of state taxes levied in the circle, the consent of the supervisory authority of the central government (the ministers of the Interior and Finance) shall be obtained.[3] The making of loans is subject to the same limitation. This is the method which has all along been adopted to restrict the actions of the provincial diet, *viz.* a central administrative control. Thus the by-laws which the provincial diet may issue, filling up details in the law, need for their validity the approval of the central government, often the approval of one of the ministers.[4] Again, if any provincial authority endeavor to do anything which is outside of its competence, the supervisory officer, *viz.* the governor, has the right to suspend its action. Finally the king may dissolve the diet, and the governor may open an appropriation and levy the necessary taxes for all provincial charges for which the diet has neglected to make provision.[5] The provincial authorities may usually appeal from the decision of the supervisory authority to the superior administrative court at Berlin. The central control is thus prevented from becoming arbitrary.

II. *The Circle Authorities.*

While the law recognizes, in the case of the circle as in the case of the province, that there is a sphere of local and a sphere

[1] P. O. § 105.
[2] *Ibid.* § 107.
[3] *Ibid.* § 119.
[4] *Cf. supra*, p. 134.
[5] P. O. §§ 121 and 122.

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of central administrative action which are quite distinct, it still has not seen fit to provide separate authorities for each of these different spheres of action, but on the contrary has conferred on the same authorities the right to act in both spheres. But when these authorities act in purely local matters they are not subjected to the same strict control as when they act for the central administration. It must further be noted that while in the province the authorities for the central administration are more important than the authorities for the local administration, the functions of the circle authorities which relate to the sphere of local administration are more important than those which relate to the sphere of central administration. The work of the circle is essentially local in character, while the work of the province affects rather the country as a whole. As the law governing the organization of the circle authorities was the model on which was formed the law governing the provincial administration, it is only natural to find that the same general principles lie at the basis of both laws. That is, there is the same combination of professional and lay elements which has already been pointed out in the foregoing description of the provincial authorities. The only difference is that one set of authorities performs all the duties in the circle which two sets of authorities perform in the province. The circle authorities are the landrath, the circle committee and the circle diet.

The Landrath is the agent of the central administration, discharging in the administrative district of the circle about the same duties that are performed in the province by the governor and in the government district by the government and the government president. He is the subordinate of the government president. He is at the same time the executive for the current administration of the circle as a municipal corporation. In this capacity he is the subordinate of the circle committee, of which he is also president.[1] He is a professional officer, *i.e.* he must be qualified for the higher administrative service. He is appointed by the king, — as a rule, from a list of proper persons drawn up by the circle diet and presented to the king for his

[1] K. O. § 76.

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action.[1] The king, however, is not bound by the list so presented, but may make his selection from persons not nominated by the diet. The landrath receives a comparatively large salary and devotes his entire time to his work.

The Circle Committee, also, is an agent as well for the central as for the local administration of the circle.[2] It occupies in the administrative district of the circle the same position that the district committee occupies in the government district and the provincial council in the province. That is, it has certain executive functions to perform and exercises a non-professional or lay control over the actions of the professional landrath. In so far it acts as an authority of the central administration.[3] As agent of the circle as a municipal corporation, it occupies the same position in the circle that the provincial committee occupies in the province. That is, it is the discretionary executive of the circle and has under its direction the landrath, who, as has been said, attends to the detailed administration of the circle as a municipal corporation.[4] It conducts the administration of the circle in accordance with the resolutions of the circle diet, which body finally decides how the circle administration shall be conducted.[5] The circle committee is, as has been intimated, a distinctively lay authority. It is composed of the landrath as its president and of six members chosen by the circle diet from among the members of the circle.[6] The term of service is six years,[7] and the office is obligatory in that a fine is imposed for refusal to serve for at least half the regular term.[8] As an authority for the central administration, it has under its direction the various justices of the peace, who, it will be remembered, are appointed by the governor of the province. As the executive authority of the circle as a municipal corporation, it has under its direction the landrath and all the other circle officers.

It has been explained in the preceding article that the men who directed the reform legislation in Prussia regarded with ap-

[1] K. O. § 74.
[2] *Ibid.* § 130.
[3] Stengel, pp. 339, 392.
[4] K. O. §§ 134, 137.
[5] *Ibid.* § 134.
[6] *Ibid.* § 131.
[7] *Ibid.* § 133.
[8] *Ibid.* § 8.

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proval the English administrative system as then existing, and intended to copy to a certain extent English models in the new organization which they formed. The circle committee is a good example of this desire and of its accomplishment. It was modelled largely upon the English petty and special sessions of the peace. It performs in Prussia many of the duties, especially those of a police character, which its English prototype performed in England. Thus it is the general rural licensing authority, is a highway authority, and acts as the supervisory instance over the actions of the Prussian justice of the peace — which office is likewise constructed upon the English model.

The Justice of the Peace is one of the most important of the officers established by the reform. One of the chief concrete ends of the reform movement was to do away with the institution of the hereditary magistracy, which existed especially in the eastern provinces of the kingdom and under which the local police was administered by the large landholders. The purpose of the reform was to abolish this, almost the last relic of feudalism, and to put the local police into the hands of officers appointed by the king, — who, at the same time, should not be professional in character but, like the English justices of the peace, should be chosen from society at large, should be obliged to serve, and should receive no salary for the discharge of these public duties. The office was to be honorary. As Dr. Gneist says:

> The principal end of the law [*i.e.* the circle law of 1872] was, after the analogy of the English justices of the peace, to attract into the service of the state the well-to-do and intelligent classes. With this end in view the territory was divided into 5658 small divisions, each of which embraced a number of manors and townships with an average population of 1500 inhabitants. In each of these divisions are a justice of the peace and a deputy, who are appointed in the name of the king by the governor of the province from a list drawn up and presented to him by the circle diet. . . . The duties of the justice of the peace consist principally in the administration of the police of his division. It is he who takes police measures against vagrants, administers poor relief, prevents violations of the law; he interposes in disputes between master and servants; he watches over the application of the building, health

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and game laws and the laws passed to preserve order in hotels and public places; he supervises the maintenance and the police of highways. His orders are sanctioned by short terms of imprisonment; while he can, in necessary cases, order provisional arrest without encroaching upon the ordinary jurisdiction of the criminal courts. He supervises the daily action of the executive officers of the police force and has the right to amend all acts of theirs which in his judgment are inexpedient or incorrect. . . . The justice has under his orders the mayors of the townships and the personnel of the gendarmerie. He himself is not put under the disciplinary power of the landrath but under that of a sort of a *judicium parium* — the circle committee — with a right of appeal from their decision to the courts of justice.[1]

This experiment seems to have proved a success. In the ten years immediately following the introduction of the reform there was only one case of the dismissal of a justice of the peace from office for corrupt administration. Of course the personnel of the justices of the peace must to a large extent be the same as that of the old police system; that is, the larger landholders will hold the offices. The great object of the reform, as we have seen, was to force this class of persons into the service of the government; the appointee is therefore obliged to assume the duties of the office for at least half of the full term of six years. But there is a great difference between a hereditary and an appointed magistracy, even when the class from which the magistrates are taken remains the same. The power of appointment possessed by the governor enables the government to exclude from the office any person who is notoriously actuated by class motives. Further, the control possessed by the circle committee, which has the right to remove a justice of the peace and which is not composed exclusively of representatives of the landholding classes, must tend to restrain any justice of the peace from yielding too much to class feeling.

The only other officers we need consider are the *Dorfschulzen* or town mayors. It has already been said that most of the political functions of local government and also most of its important economical functions are attended to by the provincial and circle authorities. The rural communes are there-

[1] Gneist, in *Révue générale, etc.* p. 252. See also K. O. §§ 48, 58, 59.

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fore little more than organizations for the regulation of the purely prudential matters of an agricultural community, such as common pasturage and tillage, and for the administration of a very few public services, such as the most unimportant roads, the schools and the churches. These matters are attended to by assemblies, sometimes composed, like our town meetings, of all the electors of the communes, sometimes formed of representatives of the electors of the communes.[1] These assemblies have the general power of controlling and regulating prudential matters of purely local interest.[2] The decisions of the assembly are enforced by executive officers, *viz.* the village mayor and two *Schöffen*.[3] During the old feudal days before the reform — the days of what the Germans call "patrimonial government" — these offices, like the police offices, were often hereditary. That is, either the office of mayor was attached to the possession of some piece of landed property, or the lord of the manor had the right to appoint the mayor. Under the new legislation all such customs have been done away with, and the mayors and schöffen are now elected by the communal assemblies.[4] Their choice, however, must be approved by the landrath;[5] for the mayors, besides being the executive officers of the communes, have the general administration of the police of the state. As police officer, the mayor has the right to order temporary arrest and to impose small fines for the violation of his orders.[6] Service in this office is obligatory and unpaid.[7]

Somewhat similar to the local organization of the commune is that of the manor. The manor exists only in those portions of Prussia which have not as yet been completely freed from the influence of the feudal régime.[8] It is nothing more than a commune which belongs wholly to some one person. In the manor, in addition to the private rights which would ordinarily result from the possession of property, the lord has certain

[1] Loening, p. 165.
[2] *Ibid.* p. 169.
[3] *Ibid.* p. 170.
[4] K. O. §§ 22–24.
[5] The landrath's veto, however, must be approved by the circle committee. K. O. § 26.
[6] *Ibid.* §§ 29, 30.
[7] *Ibid.* §§ 8, 25, 28.
[8] Stengel, p. 234.

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rights and duties of a semi-political character. Thus he acts as mayor; but as mayor he is subject to the same control as the ordinary mayor, that is, he is a subordinate officer of the justice of the peace. As the justice of the peace is now subjected to the control of the circle committee, there is no longer the same danger as formerly that these semi-political feudal powers will be abused.

One of the great obstacles to the development of an energetic and efficient local government in the communes and manors is that they are frequently of small size. To obviate this trouble, the reform legislation permits and encourages the union of communes and manors and the transfer of their functions to the new corporation thus formed. The new division formed by such a union must be co-terminous with the division of the justice of the peace (the *Amtsbezirk*). When such a union is established, there is provision made for the formation of an assembly for the division, known as the *Amtsausschuss* or division committee. It should be noted that this body exists in all the divisions; but it never attains the same importance in those divisions to which the duties of the communes and manors have not been transferred, since its functions in such a case are simply to control the police administration of the justice of the peace.[1] In England a similar control is obtained in a different way: in matters of importance two or more justices must act in concert.

Such are the officers in the circle who, while attending to the current administration of the circle as a municipal corporation, at the same time discharge, in the main as subordinates of the provincial authorities, functions affecting the central administration of the state. It now becomes necessary to take up the most important authority of the circle as a municipal corporation, *viz.* the circle diet, to which reference has already been made.

The Circle Diet. The formation and the functions of this body are of great importance, not only because of its influence

[1] K. O. §§ 48, 50, 51, 52, 53.

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in the affairs of the circle itself, but also because it elects the members of the provincial diet and because it finally raises all the provincial taxes — for the circle, as we have seen, is really the tax-payer of provincial taxes. Before describing the formation of the circle diet, mention must be made of the fact that the principle of universal manhood suffrage has never taken root in Prussia. This is particularly true of the system of representation in the local legislatures in both the rural and the urban districts. From time immemorial representation has been regarded as a right of property, not of men. The great difficulty has been to assign a fair representation to the different kinds of property existing in the localities. Up to the time of the late reform, as has been so often pointed out, the owners of landed property and especially the owners of large amounts of landed property had been able to gain for themselves a disproportionate share in the management of local matters. This it has been the purpose of the reform to do away with, but no attempt has been made to introduce the principle of manhood suffrage. The reform has recognized as existing in the rural circles three classes of property which must be given representation in the local assemblies. These are the large landed property, the small landed property, *i.e.* the peasants' property, and personal movable property or capital. The way in which these three kinds of property are represented and the amount of representation given to each cannot be made clear without careful examination of the details of the law.

All cities of 25,000 inhabitants, it must be remembered, are excluded from the jurisdiction of the rural circles and form what are termed urban circles. As these urban circles are represented according to their population in the provincial diet, capital has its representation in the provincial legislature independent of the arrangements provided for the circle diets.

In the rural circles, which are composed of the open country and of cities of less than 25,000 inhabitants, the circle diet is elected by the members of the circle who possess the qualifications of local suffrage.[1] Members of the rural circles are, in

[1] K. O. § 7.

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the first place, all physical persons who reside within its boundaries;[1] in the second place, all physical persons who, though not residing within its boundaries, own landed property therein or pursue a stationary trade or occupation therein (these are known as the *Forensen*);[2] and in the third place, all juristic persons having their domicile within the circle, including the state if it has property in the circle.[3] All of these members of the circle are formed into three colleges for the purpose of electing the members of the circle diet;[4] and in each of these colleges the qualifications of the electors and the effect of their votes are different.

The first college is composed of all persons, including juristic persons, who are members of the circle and who pay for their landed property a land and building tax of at least 225 marks (this sum may be raised by the provincial diet to 450 or lowered to 150 marks), or who pay a correspondingly high trade tax for a business carried on in the open country.[5] (This is the middle rate of the highest class in the *Gewerbesteuer*.) Every German citizen who falls within this category, who is *sui juris* and has not been deprived of civil honors by judicial sentence, may cast a vote. Juristic persons, women, minors and incapables may exercise their right of suffrage through representatives.[6] This college, it will be noticed, represents the owners of large landed estates, since land will naturally form the predominant property element in the rural circles. The persons who follow trades and pay a high tax are assimilated to the large landowners simply in order to provide representation for the various industries which do sometimes spring up in the open country.

In the second college the electing body is composed, first, of the representatives of the rural communes who have been chosen by the assemblies of such communes; second, of the owners of manors which are assimilated to communes and which discharge most of the duties attended to by rural communes; and third, of those persons who pursue a trade in the circle for which they are taxed below the rate which would put them in the first col-

[1] K. O. § 6.
[2] *Ibid.* § 14.
[3] *Ibid.* § 14.
[4] *Ibid.* § 85.
[5] *Ibid.* § 86.
[6] *Ibid.* §§ 96, 97.

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lege.[1] The second college, it will be noticed, is intended to represent the smaller owners of land, and also the smaller tradesmen, artisans and manufacturers who otherwise would not be represented at all, since ownership of agricultural land is generally necessary to vote for members of the assemblies of the rural communes.[2] The representation given to the owners of manors is of course an anomaly. It is due to the fact that they are obliged by law to defray out of their own pockets all those expenses of the manors which, were they rural communes, would fall upon the inhabitants. But as the manors are fast disappearing this privilege is not destined to have great importance in the future.[3]

The third college is a common session of the municipal authorities of the cities within the circle.[4] It is therefore composed of the representatives of personal property or capital. This statement perhaps requires some explanation. From the social standpoint all city property, whether consisting of land, houses or what our law terms personal property, is really to be regarded as personal property or capital. The owners treat it as capital, and their interests are those of the capitalistic class rather than those of the agricultural or rural landholding classes.

The members of the circle diet to be elected by these three colleges are apportioned to the rural and city colleges according to population; except that the college of the cities, if there is more than one city in the circle, may not elect more than half of the members of the circle diet, and if there is only one city in the circle, then not more than one-third. The other members of the circle diet — *i.e.* the number left after subtracting from the total number the number of the city college members — are to be elected in equal proportions by the other colleges; *i.e.* the college of the large landholders and that of the small landholders each elect one-half of the remainder.[5] The result of such a system of representation is to assure to all classes their fair share of representation on both the circle and the provincial diets. The capitalistic class can elect from each of the urban

[1] K. O. §§ 87, 98.
[2] Loening, p. 165.
[3] Stengel, p. 236, note 1.
[4] K. O. § 88.
[5] *Ibid.* § 89.

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circles two members of the provincial diet, while in the smaller cities it has an influence over the circle diet in direct proportion to the extent of the population. The exclusion of the larger cities from the circle permits them to manage their own affairs free from the control of the landed interest. At the same time the rural landholders are assured of the control of the circle diets, whose action affects them most directly, through the provision that the cities may never elect more than half of the members; and they are fairly sure of representation in the provincial diets, which have an important influence on the welfare both of the cities and of the open country. The processes of election differ considerably in each college and are of so complicated and technical a character as to offer little interest to the foreign student.[1]

The authority organized in this peculiar way has to perform for the circle as a municipal corporation just about the same duties that the provincial diet has to perform for the province. That is, it lays down the general rules which shall be followed by the circle officers in their management of the circle administration; decides what services the circle shall undertake; and levies the taxes necessary to defray the expenses of the circle administration and to pay to the province the quota of money which the provincial diet has decided shall be paid by the circle for the maintenance of provincial institutions and administration.[2] The raising of such moneys, it may be said, is the principal function of the circle diet.[3] In the performance of this duty the circle diet does not have any very wide field of action. One of the things which the circle law was most careful to do was to take away from the circle diets the power to introduce any new taxes, because these might easily derange the system of taxation adopted for the country at large. The law has obliged the circle diet to get its revenues by adding percentages to the direct state taxes.[4] There are several of these, some upon land and some upon business and some upon income, each tax thus affecting different classes of property or persons. As

[1] For a description of them see Stengel, p. 244.
[2] K. O. §§ 115–116.
[3] *Ibid.* § 119.
[4] *Ibid.* § 10.

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capital might exist to a greater extent in one circle and landed property in another, it was not felt advisable by the framers of the reform measures to fix any hard and fast rule which the circle diets must follow in fixing the rates at which each different kind of property was to be taxed for circle purposes. But at the same time it was considered unsafe to allow the circle diets perfect freedom in the fixing of such rates, from the fear that in the circles where any particular property interest was predominant the majority would be inclined to tax unfairly the property of the minority. Therefore the law has laid down general principles — or rather, limits within which the circle diets may fix the rates of the particular taxes and beyond which they may not go. For example: the law provides that itinerant trades may be exempted altogether by the circle diets, but that if they are taxed, they must not be taxed higher than lands and buildings; that land and buildings and trades may be taxed at half the rate of the incomes, but no more than incomes; and so on.[1] Under these limitations, taken together with the careful provision for a fair representation of all the different classes of property upon the circle diet, it is felt that the temptation to local tyranny through the exercise of the taxing power is to a large extent removed. As regards the total amount of taxes to be raised by any circle, the law has imposed one limitation in the interest of economical administration. It provides that if a circle diet wishes to impose a tax which is more than fifty per cent of the entire state tax levied in the circle, it must obtain the consent of the proper supervisory authority of the central government (in this case the ministers of Finance and of the Interior at Berlin).[2]

In addition to these powers of taxation, the circle diets have a series of functions to perform, some of which are imposed upon them by law, some of which they may assume voluntarily. The law, in sections 115 and 116, would seem to indicate that the circle diet may establish such institutions as in its judgment will benefit the circle — and which, it must be added, are among the general objects for which the circle organization has been

[1] K. O. § 10. [2] *Ibid.* § 176.

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formed.[1] For instance: it could not establish a new system of courts, since that is not a matter of local concern; but it might establish new institutions of an educational or charitable character, since they would be of particular benefit to the circle and are within the general scope of its competence. In the establishment of such new institutions, however, the diets must not overburden the circles with debts or with heavy taxes. To prevent them from so doing, the law has reserved to the central administrative authorities large powers of control. Debts not especially permitted by law cannot be incurred without the approval of these authorities; nor, as has been noted, can the circle diets impose taxes beyond certain limits.[2]

The question naturally arises: What is the use of two bodies with functions so similar as are those of the provincial diet and the circle diet? Why could not the work of the province as a municipal corporation be transferred to the circle, and the circle diet be allowed to attend to all the duties which are now devolved upon the province? It must, however, be remembered that the chief function of the provinces as municipal corporations is to attend to matters of a less local character than those which fall within the sphere of the circles; the object of their reorganization in their present form was to decentralize the central administration. Previous to the province law of 1875 and the dotation laws of 1873 and 1875 a series of institutions, such as asylums, were supported and administered by the central government, which it was felt could be better attended to nearer home. Therefore the central government gave these duties to the province. It could not well entrust them to the circle, because it was felt that the institutions in question were of too important a character to be attended to by so small a district; that the resources of the circle, both in administrative ability and in money, would not be sufficient for the adequate performance of these duties. While the province represents the state in these matters, the circle represents the localities, and is by far the most important of the purely local municipal corporations.

[1] Loening, p. 204.

[2] K. O. § 176.

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Before closing what is said in regard to the circle authorities, it must be noticed that most of the important offices in the circle which have been mentioned are honorary and unsalaried, and that the acceptance of all these honorary unsalaried offices is obligatory.[1] That is, refusal to accept office after an election or appointment is attended, where no legal excuse exists,[2] by loss of local suffrage for from three to six years and by an increase of circle taxes of from an eighth to a quarter. This system of coercion for honorary offices, says Dr. Gneist,

> is applied without exception in the reform legislation and had before this time been applied in the municipal organization of Prussia. The people have everywhere accustomed themselves quickly to this constraint. At first it was feared that it would be impossible to find competent persons to fill a position entailing such a grave responsibility [as that of justice of the peace]. But in 1875, after the law had been put into operation, more than 5000 justices and as many deputies were found, and it was necessary to fill only 183 places with salaried officers (*commissarische Amtsvorsteher*) who were temporarily appointed for those districts in which it had been impossible to find the proper persons.[3]

The purpose of the application of the principle was to cultivate a greater public spirit and political capacity among the well-to-do rural classes in the same way that such spirit and capacity had, as it was admitted, been cultivated in the municipalities through the same principle of obligatory service as developed in the municipal corporations act of 1808.

III. *The Cities.*

In order to give a complete outline of the local government of Prussia it remains only to speak very briefly of the municipal organization. It will be remembered that the first steps in the great reform movement of this century were made by Stein in his municipal corporations act of 1808, which served as the model for both the circle and the province laws passed so many

[1] K. O. § 8.

[2] Among the legal excuses are chronic sickness, the following of a business which necessitates frequent or continuous absence from home, the age of sixty years, service as honorary officer within the last three years.

[3] *Révue générale, etc.* p. 253.

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years afterwards. Stein was able to begin the great work with the cities because, as a result of the centralization of the eighteenth century, the social conditions of the municipal population had been made less unequal. The strong government of Frederick William I had largely freed the poorer classes from economic dependence upon the richer. Though the spirit which was breathed into the new organization was quite different from that which animated the old municipal system, the actual form of municipal government established by the new law was in no respect very different from that which existed before Stein began his work. The changes which he made consisted mainly in the widening of the suffrage for the town council, which still remained the important organ of the municipal government; in the new obligation which was imposed upon the citizens of the municipality to take upon themselves public duties; and in the greater degree of freedom which was allowed the cities in the management of their own affairs. Since the time of Stein some modifications have been made in his plan — modifications which cannot on the whole be called improvements. They were due mainly to the desire of the Conservative party — which, with the exception of very short periods, as during 1848–50, has until recently been in complete power — to curtail the political influence of the municipal population. These modifications have consisted mainly in the strengthening of the central control and in the limitation of the freedom of action of the cities in the management of their own affairs. In detail, the present municipal organization is as follows:

Just as in the open country, it is recognized that there is a sphere of municipal action in which the municipality should have considerable autonomy, and that there are certain functions of administration attended to within the municipal district which interest the country as a whole and over which the central administration should have a greater control. Just as in the circle, again, it is believed to be better not to make a complete separation in the authorities which are to attend to these two different classes of duties, but to charge the executive authorities of the city with the performance of those duties

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which are of central concern. It is provided, however, that in the larger cities the central government may, if it sees fit, put into the hands of distinctively central organs the management of police matters; and this it has done in many cases.[1] In the smaller cities, on the other hand, the town executive attends to these matters as well as to all other matters which affect the country as a whole. In these cases it is regarded as an agent of the central administration and acts under the control of the central administrative authorities, generally the governments and the government presidents.[2] In case the city is at the same time an urban circle, — which it will be remembered is the case in all cities having over 25,000 inhabitants, — the city executive in like manner attends to all the duties which in the rural circles are attended to by the landrath. In these urban circles there is also a lay body, similar to the circle committee, called the town or city committee,[3] which however attends only to matters of central concern. As this city committee consists of the burgomaster of the city and of members chosen either from the town executive board or, where there is no such board, from the town council,[4] the result is that in all cases it is the city officers who attend to the central administration in the city — with the exception (already noted) of the police administration in the larger cities.

But while city officers are thus generally called upon to attend to the business of the central administration in the city, the most important functions of the municipal administration are those of a distinctively local character. The general control of this local administration is vested in the town council, which is chosen by the taxpayers of the city.[5] The method of election is peculiar: it is well adapted to keep the control of the city affairs in the hands of the wealthy classes, since the influence of a man's vote depends largely upon the amount of taxes he pays. The system is as follows: The total amount of the direct taxes paid in the city is divided into three parts. Those persons

[1] Law, March 11, 1850, § 2.
[2] Städte-Ordnung, May 30, 1853, § 56.
[3] K. O. § 170.
[4] A. L. V. G. §§ 37, 38.
[5] S. O. 1853, § 35.

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paying the highest taxes, and who pay one-third of the entire amount, have the right to elect one-third of the members of the town council. Those persons who pay the next highest taxes, and who pay another third of the entire amount, elect another third of the members of the council. All the remaining taxpayers elect the remaining third.[1] An example taken from the city of Bonn, which has a population of about 36,000 inhabitants, will show how thoroughly this method of representation throws the control of the city into the hands of the wealthy classes. Out of a total number of 3240 electors, 162 electors elected one-third of the town council; 633 electors elected two-thirds; and the remaining third was elected by 2607 electors. The disproportion between the classes was really much greater than the above vote indicates; for while sixty-four per cent of the electors of the first class voted, and sixty-six per cent of the second class, only twenty-two per cent of the third class availed themselves of their electoral privilege. The explanation is said to be this: the vote not being secret, intimidation had been practised to such an extent that the voters of the third class preferred to stay away from the polls rather than vote for candidates who were not of their choice.[2]

The authority thus formed has the absolute control of the entire city administration. The law simply says that it shall govern by its decision the affairs of the city.[3] In addition to deciding what branches of administration the municipality shall attend to, it also elects all of the executive officers of the municipality. The execution of the resolutions of the town council is entrusted either to a burgomaster who has complete control of the administration in its details, or to an executive board whose members are elected by the town council. In such an executive board, a part of the members are professional in character (as, for example, the school commissioner, the corporation counsel, the town surveyor or commissioner of public

[1] S. O. 1853, § 13.

[2] Leclerc, La vie municipale en Prusse, Extrait des *Annales de l'Ecole libre des sciences politiques*, p. 13.

[3] For example, see Städte-Ordnung der Provinz Westphalen, March 19, 1856, § 35.

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works), and a part are purely lay officers, *i.e.* ordinary citizens who are obliged to assume office if elected and to serve at least half the regular term of six years.[1] (The same obligation to serve is imposed upon those persons who are elected to be members of the town council.[2]) In case the executive authority of the city is vested in such a board, the burgomaster is simply the presiding officer and has powers little greater than those possessed by the other members of the board. But the moral influence which he exercises is nevertheless so great as very largely to determine the character of the city administration.[3] He is a professional officer and receives a large salary. In filling the position of burgomaster — or, in fact, that of any of the professional officers of the executive board — the method pursued is one that would probably strike the American politician as peculiar. A city which needs a burgomaster, a commissioner of public works or any such officer, advertises in the papers for the particular officer needed, stating the qualifications which are required. The council then selects from among the applicants the one who seems best fitted for the place. A large city often chooses a burgomaster who has made his reputation as a good executive officer in a smaller city.[4] As the term of office is at least for twelve years and may be for life, the positions are much sought after, and the applicants are generally well educated men who have had experience in city administration.[5] The election of these professional officers generally requires the approval of the central administration before it is of force.[6] This is considered to be necessary on account of the many duties affecting the country at large which are devolved upon the town executive. While the town executive has, in the main, to carry out the resolutions of the town council, it has at the same time to exercise quite a control over the actions of this body, — both to keep them within the law and to prevent the town council from taking unwise action. In case of conflict between the town executive and the town council the matter is

[1] For example, see Städte-Ordnung der Provinz Westphalen, March 19, 1856, § 35.
[2] Z. G. § 10.
[3] S. O. 1853, §§ 57, 58.
[4] Leclerc, p. 20.
[5] *Ibid.* p. 17.
[6] S. O. 1853, § 33, Z. G. § 13.

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decided by the proper supervisory authority, in this case the district committee.[1] As this is a lay authority, the professional officers of the central administration cannot now interfere in the municipal administration. A further control exercised by the central government over the municipal administration is found in the requirement of the approval of the district committee for certain resolutions of the town council before they are regarded as valid. Among the acts subjected to such control are the more important measures of the financial administration, such as the making of loans and the imposition of high taxes.[2] The rules are much the same as those already mentioned with regard to the communal administration of the circle and province. In fact, the control over the circle and the province was modelled on that already formed for the municipalities by the municipal corporations act of Stein as amended by later laws.

A word must be said in regard to the organization of the city departments which attend to the detailed current administration. The municipal corporations act of 1853 provides that for these matters there may be formed permanent commissions or boards, composed either of members of the town council or of members of the town executive board or of these and other municipal citizens, which boards or commissions are the subordinates of the town executive and have under their direction the salaried members of that body.[3] The purpose of the provision is to call into the service of the city as many of the citizens as possible. Service on such boards is obligatory, as is the case with all unsalaried positions in the city government. Finally, the same law provides that the larger cities may be sub-divided into wards, over which are to be placed ward overseers to be elected from among the citizens by the town council.[4] These ward overseers are the subordinates of the town executive board for all matters of municipal administration. This institution has been very generally adopted in the larger cities, where it has had excellent results. The ward overseers serve as a means of communication between the different dis-

[1] S. O. 1853, § 36, Z. G. § 17, 1.
[2] *Ibid.* § 53, Z. G. § 16, Abs. 3.
[3] *Ibid.* § 59.
[4] *Ibid.* § 60.

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tricts and the executive board. If anything goes wrong in the district, there is always some one to whom complaint may be made with the assurance that the complaint will be attended to. An example of the workings of such an institution may again be taken from the city of Bonn. This city is divided into ten wards. In each of these is an overseer who, in the administration of public charity, has under his direction ward commissions of citizens, whose duty is, under his direction, to examine into all cases of demands for poor relief. So many persons are called into the municipal service of public charity that each one of them has no more than two or three families to attend to and thus knows perfectly the condition of those asking for relief.[1] This method of administering poor relief is simply the adoption in the public administrative system of the method which has been so successfully applied in this country by private associations, such as the charity organization societies and the bureaus of charity.

Such is the general organization of the Prussian city. It differs so radically from ours in the fundamental matter of representation that any comparison of the two systems would be useless. By those who believe in property qualifications for municipal suffrage, any excellence in its results would naturally be attributed to the control of the administration by the property-owning classes — a control which forms a marked characteristic of the Prussian system. One thing, however, may be dwelt upon; and that is the care that has been taken by the municipal law to force the well-to-do classes into the service of the city by making it absolutely obligatory upon a man who has received appointment or who has been elected to any of the honorary offices in the gift of his fellow electors, to assume the office. The penalty is loss of suffrage and increase of taxes. How much such a principle has affected the character of the municipal administration it is of course almost impossible to say; but the Germans at any rate attribute so much to it that they have made this principle a fundamental one in the reorganization of the local government in the open country. Again, it

[1] *Cf.* Leclerc, p. 57.

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must be noted of the municipal administration as well as of the whole Prussian system of local government that the interference of the central legislature of the state in local affairs is infinitesimal if it exists at all. Enough of the feudal idea has remained in Prussia to permit the development of the principle that there is a sphere of administrative action which must be left almost entirely to the localities; that within this sphere the legislature must not interfere at all; that any central interference that may be required should come from the administration, and in the main from the lay authorities of the administration, and should be confined simply to the prevention of the incurring of too great financial burdens by the localities. Therefore the law simply says that the local affairs of the particular districts shall be governed by the decisions of the local authorities, and that in those cases only in which the law has expressly given it the power may the central government step in to protect the localities from their own unwise action. The system is one of general grants of local power with the necessity in certain cases of central administrative — not legislative — approval. The benefit of such a system cannot be over-estimated. Through its adoption all the evils of local and special legislation are avoided. In place of the irresponsible legislative control, which has shown itself in this country so incapable of preventing the extravagance of the localities, is to be found a control exercised by responsible authorities — authorities which have a certain permanence and are well able to judge whether a given action will be really hurtful to a community or not. At the same time the greater freedom from central interference guaranteed to the localities is calculated to increase the growth of local pride and responsibility.

Such is the Prussian system of local government; in its present form the most recent of all existing systems. It has been worked out during three-quarters of a century, but is strangely similar to the plan originally sketched by Stein. Through it the attempt has been made to give to the nation the benefit of the public service of the well-to-do classes and to

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cultivate in all classes of the community a public spirit and a loyal feeling which shall ensure to the social organism a more vigorous life. Socialistic, in the highest sense of the word, as it is in spirit, it is individualistic in its application. The life of the social organism is to be made more vigorous through the better development of its members and their more harmonious correlation. Compulsory honorary public service is made the lever wherewith to raise the individual above mere egoistic aims; to cause him to keep always before his mind that he is simply a part of a great whole and that it is only through the development of that whole that the environment of the part can be bettered. Of course no administrative system, however perfect, can alone bring about such a result. In changing the thoughts and habits of men in society, the admonitions of religious teaching and the influences of a lofty humanitarian philosophy must play a far greater part. But Prussia deserves the credit of recognizing that the administrative system is one of the factors to be taken into consideration in the solution of this great problem — the conquest of human selfishness in the form of class tyranny. This problem has of late years forced itself so continually upon the consideration of Prussian statesmen that it is no wonder that one of the chief aims of the late reform has been to solve it.

The concrete method adopted in Prussia has the advantage of not being worked out *à la doctrinaire*. The whole history of Prussia has contributed to the present form of government. Foreign institutions have indeed been copied, but they have been copied judiciously. The pilots of the reform have been able to clear the rocks of English particularism without being forced upon the shoals of French uniformity. The English principle of obligatory honorary public service has been combined with the French belief in the necessity of the coexistence of local representation with local taxation. But in its main features the system is essentially German. Its faults are due to an excessive recognition of the importance of historical associations, combined in one or two instances with undue concession to class feeling. The result is a too great complexity

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of relations and multiplicity of parts. But it is to be hoped that gradual reform will do away with these defects, and that with a greater simplification of the machinery of government will come a smoothness and efficiency of action without which no system of local government, however elevated be its aims and whatever be the political sagacity which has contributed to its formation, can be set down as perfect.

FRANK J. GOODNOW.

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REVIEWS.

An Honest Dollar. By E. BENJAMIN ANDREWS, President of Brown University. Published by the American Economic Association, November, 1889. — 50 pp.

The question dealt with in this monograph is a most perplexing one. "An honest dollar," in the view of its author, is one in using which it is possible for men to be fair in their commercial dealings. Manifestly, when the power of exchange in the monetary unit is subject to violent fluctuations, either the debtor will gain at the loss of the creditor or the creditor will gain at the loss of the debtor, and if honesty be to pay a debt with money equal in value to that in which the debt was created, a fluctuating unit renders honesty impossible.

The part of this essay which invites critical study pertains to the plan suggested for holding prices to the new base line which they seem to have settled upon. Turning his back upon the past, the author asks what can be done to ensure stable prices for the future. The following is his statement of the case:

> The bulk of this nation's and of the world's outstanding indebtedness, private and public together, must, by 1889, have ceased to be on the basis of the high prices antecedent to 1873, and would be much more equitably adjusted according to the low prices now ruling. The fall of prices since 1873 has been a terrible calamity, but it has occurred in spite of us, and here we are. The evil, as a whole, a general rise of prices would not correct, but only repeat. We have struck a new base line of prices; let us plant ourselves upon it, and see to it that we are not forced to change again, whether up or down.

All must accede to this statement of the problem, and all who appreciate the evils of fluctuation in prices must be interested in any plan promising its solution. The solution offered in the monograph under review may be best presented in the words of the author. He says:

> I am impressed with the practicability of preserving prices permanently at whatever level they have at any time assumed, by swelling or contracting the volume of money in circulation, on some such plan as has been outlined by Professor Walras, of Lausanne. The method would involve (1) the critical, official ascertainment of the course of prices; (2) the use of some form of subsidiary full legal tender money; and (3) the injection of a portion of this into circulation or the withdrawal of a portion therefrom, according as prices had fallen or risen.

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For a satisfactory analysis of this scheme, it will be necessary to go one step further and notice the machinery upon which reliance is placed for increasing and decreasing at will the money in circulation. And indeed it is proper that this machinery should be exhibited, since President Andrews claims that in this he has contributed to the advance of monetary science. He says:

> It [the government] could, manifestly, accomplish the increase by the purchase of silver and the coining of it into tokens, securing its funds for the purchase as for other outlays. The tokens would take the form of certificates and find vent in ordinary government expenditure. But how recover these certificates should there come a rise in prices? The simplest way would be by selling call bonds redeemable in silver certificates, after which the replenishing process could at any time be set in play by simply calling more or fewer of those bonds.

We have now before us the theory on which this plan to regulate prices rests, and the machinery by which it is to be carried out. Will it probably work? The first step, that is, the "critical, official ascertainment of the course of prices," is doubtless feasible; and it certainly lies within the ability of government to purchase bullion and coin it into tokens, or issue upon it certificates of deposit. The question forced upon the critic is, whether or not it is possible to "inject" money into circulation, or to "withdraw" it from circulation, in such a manner as to regulate prices.

The true answer to this question appears to me to depend on the sort of money making up the circulation. If asked by one who holds in mind inconvertible paper money, or, as it is called, "fiat" money, it is doubtless true that prices tend to fluctuate with the number of monetary units; but if asked by one who holds in mind a monetary system based on gold and silver, it is equally sure that the same result would not follow. There is involved in this question one of the most elusive points in monetary science; namely, what is to be included, and what excluded, in determining that thing known as "quantity of money," to which prices are adjusted. Our author defines "quantity of money" as coined money, or deposits of bullion on which certificates are issued. He does not say this, but the logic of his plan demands such a definition, — otherwise how can he expect to anchor prices to "a new base line" by giving the government the right to increase or decrease the amount of coined money?

Such a definition of "quantity of money," however, appears to me to be incorrect, for he who holds it is forced to deny that gold and silver uncoined have any influence on prices, a position that no economist would care to maintain when brought clearly to his attention. But if it be true that gold and silver bullion are already included in the total

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amount of exchange medium to which prices are adjusted, how can the purchase of any portion of it by the government, and its coinage into tokens, raise the base line of prices? This question brings before us the fundamental error in the theory on which President Andrews bases his scheme. The number of monetary units afloat do not, as it assumes, determine prices; but prices, being adjusted to the amount of money material known to be available for use, determine the number of monetary units which, according to prevailing commercial custom, are demanded by trade. It is of course true that the denominations in which coins or certificates of deposit are issued decide in large measure whether they are used in retail or in wholesale trade, and therefore that the coining of bullion into small pieces might exert a perturbing influence on retail prices; but this is manifestly so far from what the author is aiming at that we are not justified in belittling his scheme by its suggestion.

The above criticism was framed to meet the formal statement of the scheme under review, and if left to stand without comment might itself be open to censure. My criticism accepts both gold and silver as money material. Were this correct, prices would be adjusted to the total amount of gold and silver in existence exclusive only of that portion used in the arts, a conclusion which seems to be contradicted by the fact that prices have continuously fallen notwithstanding a very liberal annual output of silver. The truth is, however, that silver is not at the present time money material; its use is confined to subsidiary or restricted coinage; prices are not graded to its commodity value, but to the commodity value of gold; and consequently any increase or decrease in its amount can have at most but a prospective influence on the base line of prices. Had we time to follow out the thought thus opened, it would lead to a conclusion of much importance, for it would show that every scheme which proposes to solve the money problem, and to arrest falling prices, by extending the use of a dishonored metal as money, must result in failure. And this applies not alone to the plan under review, but to a scheme like that of Secretary Windom's as well; indeed, it applies to the whole category of arguments by which Congress has of late been induced to force silver or silver certificates into circulation. The truth is, that so long as we hold to a metallic currency, the base line of prices cannot be affected except by a change in the quantity of price-making metal; that is to say, of the metal out of which standard coins are manufactured. No issue of "subsidiary" money can affect prices unless it proceed so far as to cause it to usurp the place of standard coin.

My review of this monograph is wholly inadequate to the importance of the question under discussion. It is unfortunate that limitation of

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space forbids my calling attention to its many merits. This, however, is of comparatively slight moment, for the readers of the POLITICAL SCIENCE QUARTERLY may be relied upon to study with appreciative discernment whatever President Andrews may write. HENRY C. ADAMS.

A Treatise on the Law relating to Rates and Traffic on Railways and Canals, with special reference to the Railway and Canal Traffic Act, 1888, *and the Practice of the Railway and Canal Commission.* By A. KAYE BUTTERWORTH, LL.B., assisted by CHARLES E. ELLIS, B.A. London, Butterworths, 1889. — 8vo, xxx, 264, 165 pp.

The Railway and Canal Traffic Act, 1888. By W. A. HUNTER, LL.D., M.P. Part I: *An Exposition of Section 24 of the Act.* London, Sweet and Maxwell, 1889. — 8vo, xv, 212 pp.

The Working and Management of an English Railway. By GEORGE FINDLAY. Second edition, revised and enlarged. London, Whittaker and Co., 1889. — 8vo, vi, 300 pp.

The Railways of England. By W. M. ACWORTH. Second edition. London, John Murray, 1889. — 8vo, xvi, 427 pp.

The Public Regulation of Railways. By W. D. DABNEY. New York, Putnams, 1889. — 8vo, v, 281 pp.

Monopolies and the People. By CHARLES WHITING BAKER, C.E. New York, Putnams, 1889. — 8vo, xv, 263 pp.

Railway Secrecy and Trusts. By JOHN M. BONHAM. New York, Putnams, 1890. — 8vo, 138 pp.

The act of 1888 marks an important step in the history of English railway policy. The law of 1873 which created the Railway Commission had proved so unsatisfactory that the select committee of 1881 was deluged with complaints, mainly as to classification and local discrimination. Repeated attempts were made by the government to enact a new law designed to meet these difficulties, but the bills introduced year after year were always defeated by the opposition of the companies. The passage of the act of 1888 marks a signal triumph for the force of public opinion, to which the English railways have hitherto been singularly little amenable.

Among the numerous treatises that have sprung up as commentaries on the new law, the two here mentioned are the most significant. Butterworth's *Treatise on the Law relating to Rates and Traffic* is more than it purports to be; for it contains not only the law, but in most cases an interesting historical survey and economic discussion of the principles involved in each particular point. The introductory chapter is devoted

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to a concise but clear sketch of canal and railway legislation from the middle of the last century. In the matter of rates Mr. Butterworth divides the history of legislation into three periods: the *tolls* stage (1800–1840) when the only statutory limitation was that placed on tolls; the *rates* stage (1840–1888) when charges for conveyance were also limited; and the *terminals* stage (since 1888) when terminal charges as well as mileage rates and tolls are fixed. The author feels his way carefully through the labyrinth of decisions, and succeeds in drawing a vivid picture of the legislative policy. He gives a similar history and criticism of the subjects of through rates, equality and preference, publication and disintegration of rates. The jurisdiction and procedure of the new Railway and Canal Commission are compared with those of its predecessor, and a chapter is added on the subject of canals. By no means the least valuable part of the book are the appendices given in the second edition (published in the same year). These contain a reprint of all the general railway acts since the law of 1845; valuable specimens of clauses in the earliest and latest special acts; and finally the recent rules and orders of the Board of Trade and of the Railway and Canal Commission. Mr. Butterworth's book will be of especial value to the economist as well as to the lawyer, for it contains the first clear and comprehensive sketch in English of the history and actual state of British legislation on the subject.

Less satisfactory is Hunter's *The Railway and Canal Traffic Act*, 1888. The work is in two volumes of which the first is devoted to the famous section 24, *i.e.* the submission to the Board of Trade of the classification and revision of maximum charges. The second volume, to appear shortly, is to deal with the remainder of the act. Mr. Hunter also gives an historical survey of the matters of classification and maximum rates. He makes more use of the blue books than does Mr. Butterworth, but is unable to arrange his conclusions systematically. The most significant point is the frequent introduction of references to American conditions. The decisions and reports of our Interstate Commerce Commission are repeatedly quoted *in extenso*. Mr. Hunter will be remembered by students as the chief advocate of the cost-of-service theory in the select-committee testimony of 1882. A change seems to have been effected in his views by the decisions of the American commission — for he approvingly cites some of their recent admirable statements which cannot possibly be reconciled with his cost-of-service theory. It may be doubted incidentally whether it is quite correct to describe the American system as "competition tempered by state regulation," and the British system as "state regulation tempered by competition." These glittering generalities are not always exact. More than one-half of the book is devoted to a detailed presentation of the classi-

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fication and maximum tolls on each of the twenty-five principal lines in Great Britain. This will be welcome material to special students. Mr. Hunter does not seem to have over much confidence in the important section of the new act which gives to the Board of Trade the general superintendence over classification and maximum rates. "The traders," he thinks, "may find out that they will lose much and gain little by the symmetry and uniformity which are to take the place of the chaos of the old special acts." But he does not explain his suspicions.

Findlay's *The Working and Management of an English Railway* deals, as the titles implies, primarily with technical and administrative questions, which must be passed over here, however interesting they may be. Mr. Findlay is general manager of the London and Northwestern line, and the book is accordingly devoted mainly to a description of this road. In the chapter devoted to the law, and to the relations of the state to the railways, the author simply holds a brief for the railways, as is natural in the manager of England's greatest line. He fulminates against state purchase, and looks with a hostile eye on governmental regulation. In the matter of rates he does not attempt to go into the theory, as did Mr. Grierson a few years ago. The most valuable part of the book for American readers is the description of the clearing house and the account of the pools, known as the traffic-rates conferences and percentage divisions of traffic. Those who believe that pooling is unknown in England will do well to read this interesting chapter.

Acworth's *The Railways of England* deals almost entirely with the prodigious changes made in actual railway management from the standpoint of traffic facilities. The purely economic problems in the narrower sense are therefore not touched upon. But the work can be recommended for the vivid picture it gives of recent British achievements in transportation, as compared with those of other countries. The only objection is, as the author himself confesses, that the language used is one of almost absolute panegyric.

On the other hand the recent American works take up a different class of subjects, and reflect the light of our recent experience. In *The Public Regulation of Railways* Mr. Dabney has given us an excellent popular account of pending railway problems. In his former capacity as chairman of the Virginia committee on railways and internal navigation he had ample opportunity to study both sides of the question; and the result is a valuable presentation of the law and the principles that should shape the law. The chapters on the economic aspects of the question in particular are in accord with the latest and most approved theories. On the whole Mr. Dabney favors the value-of-service theory, although not in so one-sided a manner as some apologists

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for railway abuses. Classification and discrimination are considered in detail, with the conclusion that pools, carefully regulated by public supervision, afford the best prospect of solving many of our troubles. The recent action of both state and national commissions is reviewed, and it is shown that the interstate commerce law must tend to promote combination. Altogether the book can be heartily recommended, and it will no doubt serve to popularize some rather unpopular views.

The two recent works, Baker's *Monopolies and the People* and Bonham's *Railway Secrecy and Trusts*, deal with much the same class of questions. Many of their conclusions are harmonious. Baker treats not only of railway combinations, but of industrial trusts, monopolies of municipal service and labor unions. He subjects the laws of competition to a lengthy, if not very profound, analysis and concludes that combination is a necessary tendency of modern society. His inference therefore is that it will be useless to attempt to prohibit these various forms of combination; that the only practicable method is to regulate and not to forbid. His practical recommendation in the case of railways is public ownership but private management. The national government should buy out the railways, but should hand them over to certain corporations to be conducted under careful regulations. Had Mr. Baker studied the experience of Italy, Holland and other countries, he would have been led to temper many of his enthusiastic utterances as to the future of such a system. In the case of trusts he confesses the difficulties in the way of public ownership, and contents himself with public regulation. Mr. Bonham, on the other hand, seeks to divide trusts into two classes, according as they have secret agreements with the transportation companies or not. The first class is dangerous, the second class is harmless because it cannot create any lasting monopoly. Such a distinction is of course entirely arbitrary, but it forms the keynote of the monograph. Mr. Bonham, while deprecating any legislative prohibition of pools and trusts as leading to worse and more secret methods, nevertheless opposes the methods of railway pooling and combination as a solution of the problem. He finds that the trouble lies in the secrecy with which the railways are managed. His remedy is absolute publicity. But he confines himself to vague generalizations, and is unduly diffident in setting forth any practical plan.

While neither of these monographs is a very profound exposition of the subject, they are both to be welcomed as showing the gradual spread of sounder ideas among the public. The popular outcry for prohibition of combinations on the one hand, and the very one-sided arguments of railway advocates and unconditional admirers of trusts on the other, have tended to obscure the whole subject. It is refreshing to notice the appearance of saner and more moderate views, even if the argu-

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ments be not very penetrating, or the suggested remedies thoroughly satisfactory. It is a great step to have attained the golden mean.

EDWIN R. A. SELIGMAN.

Grundlegung der theoretischen Staatswirthschaft. Von Dr. EMIL SAX. Vienna, 1887.

Professor Sax has become well known to the economic world through a series of contributions to the theoretical aspects of economic science. The present book may be considered as a continuation of his work published in 1884: *Wesen und Aufgabe der Nationalökonomie*. In this work he attempts to find an economic basis for what the Germans call *Finanzwissenschaft*. In the author's opinion the science of finance has not up to the present been correlated to political economy. Its so-called principles, so far as they are anything more than convenient rules of thumb, do not rest on an economic basis at all. All the leading writers on the subject have at some point in their expositions abandoned the attempt to find an economic explanation for the facts of taxation, and have had recourse to moral principles or principles of ordinary political expediency. To base taxation upon duty to the state, and to call for taxation according to ability, is at bottom an attempt to explain an economic phenomenon by ethical categories, and rests, moreover, upon a very confused notion of justice. Such a theory is of importance as against the old idea of proportional taxation, but contributes after all but little toward an economic explanation of the phenomena.

The author divides the subject into the following leading topics: 1. The theory of the public economy as a part of theoretical political economy; 2. The various theories as to the economic nature of state activity; 3. The elements of human economy; 4. The general economic categories in the public economy; 5. The collectivistic functions; 6. The groups of collectivistic processes producing value — from which he deduces his "financial principles" or what we might call his "canons of finance."

It will be seen that the author takes a very comprehensive view of the subject, so that what Adam Smith disposed of in a sentence has here grown into a volume of nearly six hundred pages. In his third division he gives a list of the general economic categories and then tries to show how they all reappear in essentially the same form in the life of the state. State activity is not for him something apart from the life of the individual; private activity and public activity are both parts of one and the same process, beginning with, ending in, and having for its sole purpose the satisfaction of the wants of man. On its economic side the state is not an external agency which may determine arbitrarily what it

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shall take from the proceeds of individual effort and what return it shall make for the goods it has taken, but simply one of the many forms of collective organization of which man must make use in his struggle to obtain the highest possible return for the least possible effort.

Everything turns about the conception of value. The author accepts with little modification the so-called Austrian theory of value, as set forth by Menger, Wieser, and Böhm-Bawerk. Public contributions, *i.e.* taxes, are only one form of value — collectivistic value.

> The state occupies exactly the same relation to its subjects on its economic side as a private individual who happens to have a practical monopoly bears to the people who purchase his commodities. The state may fix the price from other considerations than those which affect the private monopolist who also fixes his prices at his own discretion; the essence of the process, however, is exactly the same. Here we have a kind of value in the public economy which is perfectly familiar to us in the process of private economy; and it is only necessary, therefore, to examine what modifications of the same follow necessarily from the collectivistic point of view. [Page 298.]

The form of value as it appears in the public economy is assimilated directly to the forms of value appearing in the giving of commodities for services — as in paying doctors' or lawyers' bills, which seldom are the same for poor persons as for rich. In all cases, however, — whether in the isolated private economy (for example, Robinson Crusoe), or in the exchange of commodities between two private economies, or in the exchange of commodities for service or *vice versa*, or in the payment of fees and taxes, — the phenomenon of value lies at the basis and is the same in essence in each case, however much its form may change (page 297); and it is this phenomenon, this fundamental category, which, reappearing everywhere in the individual and collectivistic life of a community, enables us to develop a theory of political economy that will also include a theory of taxation.

In Section II the author takes up one after another the various theories of taxation which have been advanced, and seeks to show how they all fail in finding an economic basis for taxation. Smith, Senior, Bastiat, Say, Ricardo, List, Dietzel, Wagner and Stein receive his attention in turn, and it must be said that on the whole he makes out his case against them. I think we must grant him that up to the present the so-called science of finance is in an extremely unsatisfactory state. Our knowledge of financial systems has been largely advanced, but the science is not much better off as to its fundamental principles (on its economic side, at least) than it was fifty years ago. Wagner, who has done much to advance the subject in various ways, refers in his discussions almost as much to ethical as to economic considerations and really bases his system almost entirely on the former.

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Every person has individual wants and collectivistic wants; *i.e.* he has wants which come to him as a human being simply and would persist if he were an isolated individual, and he has wants which grow out of his association with others. None of the latter can be satisfied without some kind of organization; and in this system he must give something to others as well as receive from them. Many of them can be satisfied only through the highest type of organization, the state; and to the state also he must give something in order to secure this satisfaction. Individual and collectivistic wants must be co-ordinated within each private economy with relation to its stock of goods.

The final utility of every satisfaction for particular wants will vary with every economy; so that the value of a state service will be very different to different people, varying notably with the stock of goods in their possession. The state may, therefore, for a given service take very different sums from different private economies, because the final utility of the service varies with the amount of goods.

This theory justifies, therefore, not merely so-called proportional taxation but also progressive taxation, and gives an economic basis for it. The author analyzes the phenomena and comes to the conclusion that no person should contribute to the satisfaction of the collective wants, *i.e.* pay taxes, until his goods exceed the absolute minimum necessary to physical existence. From that point on he can give an increasing proportion of his goods, up to a certain point where the final utility of further state services begins to grow smaller. When this latter point is reached, there is no further *economic* basis for a further increase of the rate. From a similar analysis he deduces the propriety of taxing at different rates individuals of the same property but with unequal claims upon them. "The problem of taxation is to take from the private economies for collective wants quantities of goods which shall be so measured that every person, according to the actual condition of the individual values within his possession, shall estimate the goods taken from him as high as others do the goods taken from them" (page 514).

The author then takes up some of the more special questions. He thinks that taxation is only reasonable as a system of different kinds of taxes (page 541). This follows directly from his theory. It is a justification, therefore, to a certain extent of the existing methods of taxation. The single-tax theory is not only unsatisfactory from a practical point of view but is a violation of fundamental economic doctrines. The only method of securing fairly perfect taxation lies in developing a complicated system of many different kinds of taxes, so arranged that one will supplement the other. Complication, not simplicity, is the characteristic of a good system of taxes. A few paragraphs are added upon the distinction between direct and indirect, special and general taxes,

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etc. In his treatment of these subjects the author does not differ very widely from Schäffle.

Professor Sax's work pretends to be nothing else than a theoretical investigation. As such, it must be admitted, I think, that he has made a substantial contribution to the subject. He emphasizes an aspect of the topic which must attract more and more attention until a satisfactory solution of its problems shall be found; and he is the first to give us a purely economic basis of taxation and a purely economic rule for the distribution of taxation. Not "equality of sacrifice" but "equality of values taken" must underlie all reasonable systems of taxation.

EDMUND J. JAMES.

Grundlagen der Volkswirthschaftslehre. Von FRIEDRICH JULIUS NEUMANN. Tübingen, H. Laupp, 1889.

In opening this book the reader will be struck by the contrast between dedication and preface. The dedication is to Roscher, and indicates that the author was trained in Roscher's methods; but in the first sentence of the preface the deductive bent of Professor Neumann's mind is clearly revealed. There is, however, great strength in this union of opposing points of view; and from thinkers like Professor Neumann, who are deductive by instinct but historical by education, there is a good prospect that the differences between the old and new political economy will be finally set aside.

When, however, I examine the contents of this book, and seek to estimate the success of Professor Neumann's efforts, I find myself at a serious disadvantage. After the usual German custom, the book is given to the public in parts, and only one of the three proposed parts is yet in print. This part is mainly devoted to definitions and to the fundamental concepts of the science. The second part will treat of the objects of political economy, the nature of its laws and the theory of value and price. The third part will develop the laws of production and the shares in distribution. Here is an attractive programme, and one of especial present interest, because many of the doctrines which Professor Neumann proposes to emphasize have not been adequately treated by the historical school of economists. In the theory of distribution and value most of the historical school seem to be Ricardians at heart. If Professor Neumann can develop a broader point of view — one more in harmony with the conception of economic science which German thinkers have long striven to realize — he will do a signal service.

It is, as I have said, difficult to judge of the part now at hand, because the utility of economic definitions depends upon the use made of them

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in the discussion of economic doctrine. Definitions and concepts must be judged solely by the light they throw upon the phenomena they are meant to explain. From this point of view I cannot wholly agree with the method used by Professor Neumann. He decides the meaning of terms rather by the weight of authority than by their capacity to express clearly new ideas of vital importance to the progress of economic theory. His method seems to be due to the influence of his historical education; yet if there is any field where purely deductive methods are in place, it is in dealing with concepts and definitions. When practical policies are under consideration, the only hope of a solution rests in a conciliation of opposing views. But a conciliation of two opposing theories of value is not possible. One and only one will explain the phenomena; and it in the end must displace the other, no matter how much the weight of authority or of past usage may be against it.

SIMON N. PATTEN.

Zur Theorie des Preises, mit besonderer Berücksichtigung der geschichtlichen Entwickelung der Lehre. Von Dr. ROBERT ZUCKERKANDL, Privatdocent an der Universität Wien. Leipzig, Verlag von Duncker & Humblot, 1889. — 8vo, x, 384 pp.

He must write rapidly who would record as they appear the valuable works of the Austrian economists. Dr. Zuckerkandl has given us a critical history and somewhat more. He has traced the evolution of the theory of price for the sake of attaining a point of view from which to examine the theory itself. He has an introductory word on methods of study: deduction is legitimate when its basis is sufficiently broad and real, and the abuse that brings the entire method into disrepute consists in founding a scientific system on assumptions that are too limited to correspond with the facts of life, and in giving to conclusions thus obtained an application that is nearly universal. No price theory can be broad enough to cover all cases; conclusions reached by the best of methods will not be universal.

The author gives some space to a study of nomenclature, and, with one qualification, agrees with that of Professor Menger. He traces the divergence of past theories from the right path to the fact that writers have started with the idea that values are governed, not by relations between men and commodities, but by outward facts such as changes of supply. This bias has led to "mechanical" theories, which fall into three classes according as they base the adjustment of prices on demand and supply, on cost of production, or on labor. Dr. Zuckerkandl traces first, however, the evolution of the "subjective" theories of value, or those which are founded on relations between men and commodities. He

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shows the value of Turgot's analysis, and the loss suffered by later writers from a failure to follow in the line that he marked out, and points out the great advance made by Professor Jevons. The growth of the subjective theory in Germany he traces through a series of writers including Rau, Schäffle, Roscher, Hildebrand and Knies, and ending with Menger, von Wieser, von Böhm, Sax and Neumann. He then describes at length the development of the mechanical theories, and ends with a special study of the subjective theory itself in its latest and best form. Aside from its independent value the book constitutes an especially good introduction to the writings of recent economists of the Austrian school.

J. B. CLARK.

Finanzwissenschaft. Von ADOLF WAGNER. Dritter Theil: *Specielle Steuerlehre.* — Uebersicht der Steuergeschichte wichtigerer Staaten und Zeitalter bis Ende des 18. Jahrhunderts. — Die Besteuerung des 19. Jahrhunderts. Einleitung: Britische und französische Besteuerung. Leipzig, Winter'sche Verlagshandlung, 1889. — 8vo, xxxi, 916 pp.

System der Finanzwissenschaft. Ein Lesebuch für Studierende. Von GUSTAV COHN, ord. Prof. der Staatswissenchaften an der Universität Göttingen. Stuttgart, Ferdinand Enke, 1889. — 8vo, x, 804 pp.

The almost simultaneous appearance of these two works is an indication of the active interest taken by German students in the science of finance. An adequate presentation and comparison of the views contained in these latest additions to fiscal literature would require a separate article of many pages. It will be possible in this notice only to touch lightly on some of the more fundamental points.

The first volumes of Professor Wagner's *Finanzwissenschaft* are familiar to all students. Wagner is an acute original thinker, who started out almost two decades ago with the idea of publishing a new edition of Rau's finance, but who soon found his differences to be so great as to call for a new creation, rather than a new edition. The first two volumes of the work appeared years ago — the second in 1880. The third volume which has just been completed deals not with general theory, but with special questions in the history and practice of taxation. Unfortunately Wagner's plan was so comprehensive, his method so confusing and involving so much repetition, as always to make the ultimate completion of the work very doubtful. In fact, as the work progressed, Wagner entered into continually greater details which would have been in place only in a cyclopædia. The consequence is that it has taken him ten years to write volume three, and that he has been able to discuss the present condition of French and English taxation only.

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Wagner himself has become tired of this minute method of proceeding and tells us now that he has practically abandoned the intention of completing the work. This is all the more to be regretted because the systems of France and England have already been made familiar to us by other good publications, while the condition of the other countries is far from being equally well known. Wagner shrinks from the labor necessary to write such a fourth volume; but he has himself to blame for being compelled to leave his work a torso. This new volume requires no especial commentary beyond the statement that in all his minute details of the history and practice of taxation, as well as in his general summaries of the French and English systems, he remains true to the ideas advanced in his former volumes. He has continually in mind the demands of what he calls the socio-political principles, the principles whereby the government is looked up to as the regulator of the distribution of wealth and taxation is regarded as a mere engine to redress the existing inequalities of fortune. Much as we may dissent from the fundamental points of Wagner's general financial position, it must be recognized by all that he has developed his doctrines with consummate keenness and phenomenal learning, and that his science of finance, even though a torso, still stands at the head of financial literature for the suggestiveness of its views and the wealth of its contents.

Wagner's pre-eminence, however, is likely to be seriously threatened by the appearance of Professor Cohn's *Finanzwissenschaft*. Cohn's book is constructed on an entirely different method. It forms the second volume of the general *System of Political Economy*, the opening volume of which was noticed in the POLITICAL SCIENCE QUARTERLY, volume i, page 143, and which created a considerable stir throughout the scientific world. After a general introduction on the nature and history of the science of finance the first book treats of the essence of government economy or of the public household. It deals with public functions, public expenditures, the history and development of public revenue, and the budget. The second book discusses the principles, history and actual systems of taxation. The third book is devoted to a presentation of German taxation. Finally a fourth book treats of public credit.

The chief interest of the work lies in the first book and in the first chapter of the second book. The remainder of the volume is always interesting, as are all of Cohn's writings, but it contains nothing that can be called a signal contribution to financial science. He is indeed, through his intimate acquaintance with Swiss financial methods, often enabled to illustrate certain principles more successfully than any of his predecessors, but in the main he follows the rather conservative lines of accepted views. The book on German taxation gives an excellent

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picture of the present situation, but does not need any discussion in this place. Finally the chapters on public credit contain an admirable historical survey, but in matters of principle do not afford us anything which cannot be found at least equally well said in Professor Adams' recent work.

It is otherwise with the discussion of the general principles of finance. Cohn's treatment of the various kinds of public contributions (*Die Arten des öffentlichen Entgeltes*) marks a distinct advance. His theoretical separation of fees, assessments, taxes, *etc.* is based upon an analysis of comparative private and public benefits, and he thus attains a satisfactory solution of a problem that has always caused the German scientists much trouble. His description of the historical development of public economy is clearer than that of Roscher, and traces the chief lines of development with a master-hand. His short discussion of the principles of local finance is a veritable relief when compared to the laborious and confused chapters to be found in other treatises.

Most striking is the treatment of the equities of taxation. Cohn shows that just as the accepted ideas of justice are a product of historical evolution, so the conception of just taxation has assumed a different form in every stage of human progress. He gives an interesting historical sketch of the different ideas that swayed the public mind at various epochs, and then devotes himself in particular to a consideration of proportional *versus* progressive taxation. The result of the long discussion is the adoption of the principle of progression, not for Wagner's socio-political reasons, but simply because under modern conditions proportional taxation no longer corresponds to taxable capacity. Cohn seeks to define and limit the principles of progression, and in connection with this gives a stimulating history of the doctrine of the "minimum of existence."

This is not the place to attempt a criticism in detail. That must be reserved for another time and place. Weak points are not lacking, as *e.g.* in the discussion of the incidence and diffusion of taxation and in the treatment of the property tax. It will have served our purpose to call attention to the subjects in which Cohn's book marks a distinct advance on its predecessors. Wagner, Roscher and Cohn supplement one another. Wagner is more radical and audacious in his suggestions and illustrates his theories by a wealth of statistical material; Roscher is weak in theory but strong in history; Cohn seeks to keep the golden mean. But in two respects Cohn's finance is superior to all others — in clearness of style and in philosophic breadth of view. We welcome this new accession to economic literature as one of the most important works of the decade.

EDWIN R. A. SELIGMAN.

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A History of the Ancient Working People, from the Earliest Known Period to the Adoption of Christianity by Constantine. By C. OSBORNE WARD, Translator and Librarian, U. S. Department of Labor. W. H. Lowdermilk & Co., Washington, 1889.

This is the first considerable attempt, so far as I know, to set forth in English a history of the producing classes of antiquity. Mr. Ward has encountered the difficulties of such pioneer work with courage and zeal, but he has not all the qualifications for entire success. His spirit, in the main, is admirable, but it is dashed with a vein of enthusiasm which not infrequently finds expression in a vague and mystical rhetoric. His scholarship is extensive but undisciplined; one misses the exercise of a trained critical judgment. With remarkable industry he has brought together a mass of information not accessible in our histories, but it is not carefully sifted and one finds much hasty generalization and dubious philosophy. A very serious defect in the book is its lack of systematic arrangement. It professes to cover a very long period, but the author seems to have no adequate sense of time. This appears chiefly in his marshalling of the evidence in regard to the ancient labor organizations. It is derived from all ages and is often applied as if the organizations were the same at all times. There was a notable increase of *collegia* under the favoring legislation of the Antonines, but Mr. Ward is so convinced of the prevalence of trade unions in prehistoric times that he does not give sufficient attention to the stages of their development in historical times. Critical attention to chronology would have greatly improved his chapters. With Mr. Ward, Numa is as historical as Julius Cæsar, and the legislation of Lycurgus is as authentic as that of Solon.

The first one hundred pages is the least valuable portion of the book. It is pervaded by a most distorted view of ancient society, which seems to have come from a misapprehension of Fustel de Coulanges. Mr. Ward thinks that the vast mass of Roman slaves consisted of the younger children of the free citizens! The first-born succeeded his father, the rest of the children became his slaves! Pages 133–332 are devoted to a history of ancient slave insurrections, which, on the whole, deserves praise. It is based on the original sources and German monographs, and the narrative is lighted up by a deep sympathy with the oppressed. The last third of the volume deals with the ancient organizations of free laborers and is derived from a thorough study of the inscriptions and of Mommsen's essay *De collegiis et sodaliciis Romanorum*. The defects in arrangement and the lack of chronological detail have been referred to, but Mr. Ward's zeal and industry in elucidating a very obscure subject deserve warm recognition. Mr. Ward, however, rather overestimates

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the completeness with which he has canvassed the existing literature of the subject. He does not mention Levasseur's *Histoire des classes ouvrières en France*, Wallon's *Histoire de l'esclavage dans l'antiquité*, or Dureau de la Malle's *Économie politique des Romains*. Levasseur's work would have given him a model as regards arrangement and method. The article of Mr. W. A. Brown in the POLITICAL SCIENCE QUARTERLY for September, 1887, would have given him light on the relation of the state to labor in the latter part of his period.

Chapter XXII is an attempt to show that historically the red flag has always been the peaceful standard of labor, and that consequently squeamish people should not object to processions of anarchists flying "the incalculably aged flag of labor." The case is hardly made out, but many interesting facts are mentioned. No light at all is thrown on what the red flag means to its modern bearer, which is the essential point. The corner stone of the theory, as is not infrequently the case, is a false etymology. The last chapter is a good specimen of the author's vague and mystical philosophy of history.

Some of Mr. Ward's theories are unique. He found Diodorus a valuable source, but was embarrassed by the losses his work has suffered. Diodorus evidently told too much truth. "We, in consequence, as students of sociology, must charge against that slave-holding aristocracy all mutilation of his history . . : A large portion of the details . . . has apparently been sequestered through the vandalism of contemporaneous censorship." He adds: "A similar outrage has been perpetrated upon Livy's history of Spartacus, proved by the epitomes or chapter headings xv, xvi, xvii, which have survived the wreck." Sallust was similarly tampered with. (Page 211, and note 51.) The desire to be realistic and vivid leads Mr. Ward too far in the application of modern terms to ancient things. Slaves are "workingmen," and slave insurrections "strikes"; the cruel slaveholder Damophilus is termed a "millionnaire." It is a sore temptation with ardent reformers to conceal an argument in every epithet, and Mr. Ward often yields to it. His notion of a workingman is certainly comprehensive, for it embraces not only the slaves but such men as Phidias. Mr. Ward's fervor leads him into some errors of interpretation, a few of which may be noted. On page 277 he says: "Often young children were driven naked into the arena, given knives, and forced, for the amusement of these truculent nobles, to struggle in the awful qualms of danger and death until the little innocents, one or more, fell dying in their bath of blood." What is the proof? The statement of Nicolas of Damascus that a certain man once left a provision in his will for such a contest, but that the people, horrified at the cruelty, frustrated the design. Mr. Ward's statement is not supported by this evidence. On page 154 he says: "It was ordered

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that the Carthaginian hostages be degraded to the condition of slaves to work for private individuals." What Livy says is: "Ut et obsides in privato *servarentur*." (Page 151, note 18.) On page 355 the sense is entirely missed by rendering "*dolus malus*" "pain."

The proof-reading is very carelessly done. The attempt to read the Greek or Latin notes is an admirable exercise in textual emendation. An analytical table of contents ill supplies the lack of an index in a volume containing such a variety of matter.

EDWARD G. BOURNE.

Fabian Essays in Socialism, edited by G. BERNARD SHAW. Published by the Fabian Society, London, 1889. — 233 pp.

This book contains a course of eight lectures, delivered in 1888, by members of the Fabian Society. They set forth in part at least the theory and programme which the members of that society hope gradually to induce the Liberal party to adopt, and with its help to embody in English law. The authors deal almost wholly with English conditions and problems. The writers to whom they refer as authorities or antagonists are English, or those whose works exist in English translations. The result is that the errors of the Manchester school are again exploited for the benefit of social democracy, and much well-beaten straw is threshed again in the hope of finding grain.

The first part of the book is devoted to a criticism of existing social institutions in England. They are studied from the economic, the historical, and the moral standpoints, with the purpose of showing that they have failed to secure national health, and that tendencies are now at work which will overthrow them and prepare the way for the socialistic state. In the second part the organization of property and industry under the socialistic state is described. Finally the method of transition to the new order and the prospects of the movement are outlined. We are told by the editor in the preface that the work, both in its form and substance, is "a sample of the propaganda carried on by voluntary lecturers in the workingmen's clubs and political associations of London." Though the scientific value of the lectures may be lessened thereby, the interest attaching to them as results of a persistent attempt to influence English opinion is increased.

Within the limits of this review it is impossible to glance even at the contents of all the essays. The writer will state what seems to be some of the leading features of the book.

That the question of land and rent should occupy a prominent place is natural. Mr. Shaw opens the discussion with a paper in which he generalizes Ricardo's law of rent in such a way as to account *a priori*

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for the existence of an unproductive landlord class, over-population and starvation wages. He sums up his analysis as follows:

> Incomes derived from private property consist partly of economic rent; partly of pensions, also called rent, obtained by the subletting of tenant rights; and partly of a form of rent called interest, obtained by special adaptations of land to production by the application of capital; all these being finally paid out of the difference between the produce of the workers' labor and the price of that labor sold in the open market for wages, salary, fees, or profits.

The conclusion is that economic rent should be appropriated for the good of the community, and the other forms of rent no longer exacted. The method of treatment is essentially the same as that by which Bastiat reached the opposite conclusions. The one is no more convincing than the other.

Mr. Clarke traces the growth of capitalistic production till it has culminated in the trust and annihilated free competition. Mr. Webb shows how the theory of *laissez faire* had to be abandoned, and the state was forced to interfere to check the evils which developed during the first half of this century in the English factories and mines. That interference has gone on till now a large number of industries are controlled to a greater or less extent by the state or municipality. This, it is argued, is an evidence and a result of the growth of the democratic spirit. With that has arisen the true organic conception of society. With the triumph of democracy in England, which is regarded as certain, will come the overthrow of individualism and the establishment of a socialistic régime. Industries organized under the form of the trust are ready for absorption by the state.

Several of the writers declare themselves opposed to the construction of ideal commonwealths. They say that this was an amiable weakness of the older socialists, but that experience and the study of evolutionary philosophy have shown it to be unscientific and useless. It will be sufficient, they say, to proclaim our destructive criticism of the present social order, and to aid the progress of those measures of reform the object of which is to improve the machinery of government and make it more serviceable to the masses. But the socialist must have an ideal, whether for tactical purposes he conceals it or not. Hence we find that Mr. Wallas and Mrs. Besant have sketched the future social state, and its outlines will be familiar to all students of social-democratic theories.

Some statements in the last article, by Mr. Herbert Bland, together with a few passages occurring elsewhere in the book, would indicate that the members of the society are not fully agreed as to the methods of their propaganda and the probable result of the movement. The policy of force all emphatically reject. Mr. Bland has very rational doubts as to the possibility of leavening the Radical and Liberal parties with socialistic

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ideas. Much that is called socialism in this book is only enlightened, progressive liberalism, and every advance in that direction renders the success of social democracy less probable. Even the writers see no prospect of the success of a purely socialistic party in England at present. The progress of the movement will be watched with interest.

H. L. OSGOOD.

Individualism. A System of Politics. By WORDSWORTH DONISTHORPE, Barrister at Law. London Macmillan & Co., 1889. — 393 pp.

The essays on sociological problems which Mr. Donisthorpe has collected under the above title are characterized by aggressiveness in both style and method. The proportion of destructive criticism to constructive work is large throughout the essays. This criticism indeed is often as keen and forcible as it is always vigorous, and it aids indirectly in elucidating the author's "system" of theoretical and practical individualism. His plan of campaign involves a sharp attack upon the absolute individualism maintained by certain "extreme individualists," as well as a constant warfare against both the delusive gospel of socialism and the measures of legislative interference supported by English "neo-radicals." These measures are denounced by the author as essentially and dangerously socialistic. When the author arrives at his practical programme, his advocacy of "labor-capitalization" as an individualistic solution of labor-troubles is conducted in a particularly militant spirit as regards economists and their inconveniently narrow definitions of capital. There is apparent a disposition to magnify the remedy advocated at the expense of any plans and efforts on other lines for the laborer's welfare.

In the way of positive theory Mr. Donisthorpe aims to set forth the principles of an individualism which would be consistent with the mechanically conceived evolutionary movement of society and its institutions. In respect of this, Mr. Spencer himself is weighed and found wanting. He is detected (*cf.* page 271) in setting up for the defence of the individual against the majority a claim of natural rights; as still manifesting a faith "in abstract justice, as something anterior to society or even to man." On the contrary, liberty and justice are gradually evolved and hence of a relative character at any given time in the process. What can be made out, is the present tendency of the social movement. Mr. Donisthorpe finds it a little embarrassing to show, in face of what he elsewhere describes as "half a century of socialism in practical politics," that the present tendency of social evolution is "toward the minimizing of interference"; but he faces the difficulty boldly with the statement that the phenomena referred to are temporary

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and superficial; the undercurrent is the other way. We are referred for evidence of this to a wider induction from English history. The tendency being demonstrated, the *onus probandi* is always upon those who advocate measures of interference. Socialism is reactionary and it is unwise; for "socialists professing evolution advocate artificial selection, whereas individualists [*i.e.* of Mr. Donisthorpe's special school] put their faith in natural selection," and the latter represents the operation of the unlimited as against the limited insight of man. This subject however is fully treated only in the latter part of the volume. It will be recurred to after noticing some of the more important ideas of the book in regard to political and economic matters.

Three chapters on the nature, structure and functions of the state are well worked out from the general idea of the state as an organism, conceived in accordance with biological analogies and developing under the laws of social evolution. The nature of the state is that of an organism whose essential attribute is the ability to co-ordinate its parts. This gives at once the limit of effective state organization and the principle for differentiation of the parts. There can be no considerable state without some kind of local government; but the local divisions should be natural ones instead of being made on arbitrary or accidental, because traditional, lines. The true limits of the imperial functions and the residual local functions are defined by the principle of decentralization, interpreted as meaning not local legislation but local administration. England and America are referred to as now exhibiting tendencies to exchange with each other their hitherto guiding principles as to local government. Mr. Donisthorpe puts forward his doctrine of the *Individualization of Local Government* as an ideal to be gradually approached.

As regards the structure of government, power gravitates toward numbers and democracy is inevitable. Our author exhibits little if any more confidence than Sir Henry Maine in the capacity of the people at large for self-government considered as legislation; but he accepts the democratic tendency as a beneficial one, provided "that the function of the citizen is the safeguarding of his own liberties and not the manufacture of restraints on the liberty of his fellows." Democracy is moreover to be understood as the government of the people by the *whole* people; it is not the numerical majority but the effective majority, the weight of social forces, in fact, that governs. The government by the whole acts as a safeguard to the individual, since the power of interference is limited by the necessity of effecting a consensus of so many varying or conflicting interests and wills; hence, also, another argument for central legislation, with local power of administration.

Under "Functions of the State," Mr. Donisthorpe notices that "struc-

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tural changes in the state are working changes in the views of the ultimate governing body as to the duties of the state." He takes indeed a pessimistic view of the effect of the interfering legislation of the last half century in England; representing its results upon English character in the most sombre colors, and foreboding evil effects on the national capacity for self-government through "the weakening and supplanting of contractual rules by central legislation." He finds urgent need for timely indoctrination of the classes who are coming into political power with the belief that the best medicine for all social ills is liberty.

Mr. Donisthorpe next addresses himself to current social issues, especially land tenure and the labor question. The latter is the more urgent with the author, as he accepts fully the "iron law" and takes a dark view of the operation of the wage-system. An interesting analysis of the legal conception of property and a criticism of standard economic definitions of capital prepare the way for the enunciation of a property right of the laborer in the product. This he of course legally resigns in the wage-contract, but might under "labor capitalization" assert as the basis of a claim to a share of profits. Capital is so defined as to include labor (or the laborer); hence the laborer should justly receive, not indeed a share of the profits on "non-human" capital, but the whole profit on his investment of human machine-power, in addition to his wages. In bargaining away this right, laborers "give away the interest on that valuable property, — their own selves." Mr. Donisthorpe in his onslaught on the economists and their definitions fails to recognize that Mr. Sidgwick and others indicate *personal* capital; but of course for the purpose of his argument laborers' force must be recognized as in every sense capital. Making it such by definition does not however resolve any of the obvious practical difficulties as regards distant settling days, sharing of losses, *etc.*, which the laborer would have to meet to place his labor power on equal terms with "non-human capital." But Mr. Donisthorpe's arguments for the equity and advantage of a system which would fully enlist the self-interest of the laborer in production are generally valid for industrial partnerships and schemes of co-operative production, though he makes but grudging admission of the merits of these methods.

The discussion of the part played by labor in the production of wealth furnishes occasion for effective criticism of theoretic socialism, as falsely declaring that "because the creator of wealth has a right to the fruits of his labor, therefore existing laborers have a right to the fruits of past labor." Vigorously also is the pretence repudiated that all co-operation is socialistic. Socialism and individualism both look forward to increased co-ordination of industry; the whole difference is that between voluntary co-operation and compulsory co-operation. Socialism would relax the internal incentives; would substitute external coercion.

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In an ably written chapter on the "Basis of Individualism," which originally appeared in the *Westminster Review*, Mr. Donisthorpe makes the keen criticism of Mr. Spencer before referred to, with reference to his departure from the evolutionary method, and works out what we have above indicated as his view of a tenable basis. He points out how the progressive evolution of law takes place in a state through action and reaction of the units upon each other in the direction of adapting the conditions to mutual welfare. "Personal liberty is the final outcome of social evolution, and not the cause." The organized social control which was once a factor in social integration cannot now be a factor in social disintegration, as the worshippers of liberty pure and simple (like Mr. Spencer and Mr. Auberon Herbert) maintain. Compulsion will be minimized in conformity with the growing tendency of social evolution, but no fixed rules can be laid down. What is needed is "to discover, not to *manufacture*, the true statical laws which are actually operative in societies." "The art of politics is the application of the science of nomology to the concrete." Middle principles of practical application will be brought to light by a patient and intelligent study of nomology.

Mr. Donisthorpe appears to hold with the German school of jurists to the existence of certain statical laws or internal group-morals, which at any given time or place tend to hold good and to guide the unconscious development of law. In this view, however useful up to a certain point, we seem to miss the element of the struggle for justice as a shaping force in law, which Ihering has so eloquently emphasized, and to find explanation for a certain excessive aversion to the interference of legislation. Putting it otherwise, there may be too great a deference for mechanical evolution, and too little faith in the potency of the rational and voluntary element to call out the proper influence of that element. Yet our author's style and method, though more subdued in this particular chapter, hardly betray the influence of a serene and tranquillizing, not to say soporific, system of social philosophy!

G. B. NEWCOMB.

Essays on Government. By A. LAWRENCE LOWELL. Boston and New York, Houghton, Mifflin & Co., 1889. — 12mo, 229 pp.

Under the influence of the late Mr. Bagehot's writings, it has become quite the fashion to make comparisons between the American and English forms of government, generally to the disadvantage of the American. Those who are chiefly intent on the study of the mere methods of government, while leaving out of view the more remote and less obvious effects which such methods may produce, are quite likely to see in the American system of legislation a very bungling arrangement. What is needed, they assume, is some method by which the will of the majority

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can be efficiently and rapidly carried out. Such a system exists in England — and what can be more simple than to import from that country her form of responsible cabinet government, by means of which, as Mr. Dicey says, Parliament can repeal the union with Ireland almost as quickly as a probate judge can dissolve a contract of marriage?

In the first, second and fifth of the essays before us, Mr. Lowell defends the American form of government and shows the weak points in the opposing system. While advocating popular government, he believes that in order to protect the minority and the individual it is necessary that there should be a limit to the power of the majority. It is evident from recent legislation in England, as Mr. Lowell asserts, that the respect for law and custom which has hitherto restrained the majority is sensibly diminishing. The common assumption that Parliament's power is limited only by its will makes every issue a question not, as formerly, of law, but rather of expediency. Even the Bill of Rights and Magna Charta, intended to protect the people from attacks on the part of the kings, are not sufficient to restrain the action of Parliament. "To so great an extent is this true, that property in England is, on the whole, less secure from attack on the part of the government to-day than it was at the time of the Stuarts." "The Americans," continues Mr. Lowell, "are the only people who have set themselves to work to solve the problem of restraining the power of the majority." In other words, they have set bounds to the power of the legislature; whereas in England the legislature has absorbed all the power of the kings without being bound by the checks imposed upon them. "The refusal by the possessor of political power to make use of it requires the exercise of great self-restraint; and the art of framing a limited government, like the art of civilization itself, consists not only in developing the habit of self-control, but even more in removing temptation, and in making that self-control as little irksome and, indeed, as little conscious as possible." This end has been to a great extent attained in the United States by the creation of several independent political bodies, each of which is restrained by the presence of the others, while all are amenable to the final authority of the constitution; and the expression of the supreme popular will is so surrounded with formalities that a change of the fundamental laws may not take place without the greatest amount of discussion and reflection.

Mr. Lowell takes the ground not only that recent legislation has gone much further in England on the road towards socialism or parental government than it has in the United States, but that it is much more likely to do so under the English form of government. And it is chiefly for this reason that he would deprecate the introduction of the English system into our government. The first essay discusses the probable

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effect of such a change. That cabinet government would reduce the president and Senate to very inferior positions scarcely needs to be argued. But further than this, as Mr. Lowell points out, it would tend to undermine the autonomy of the states, the independent position of the Supreme Court, and the force of the constitution itself. In other words, it would greatly weaken, if it did not destroy, the whole federal system. It is impossible to give briefly an adequate conception of the close and logical reasoning by which Mr. Lowell arrives at these conclusions. He shows a thorough grasp of the subject in all its bearings.

The fifth essay is a carefully reasoned and well-sustained argument against the theories of the analytical school of jurisprudence. Probably most common-law lawyers still adhere to the Austinian doctrine that "law is the command of a political superior, accompanied by a sanction, to a political inferior," and that there is "no limit to the power of the sovereign." Yet, under the lead of Sir Henry Maine, there has arisen a pretty wide-spread revolt against that doctrine. Perhaps Mr. Lightwood's book on the *Nature of Positive Law* is the best exposition of the ideas of this new school. Some writers, as Mr. T. J. Lawrence, even deny that force is the essential element in a sanction. Mr. Lowell has argued mainly the question as to the limitation of sovereignty. He charges Austin with reasoning in a circle and with having unwarrantably assumed one of his premises. The objection to Austin's theory is that it requires at all times a visible sovereign, ready to act and without restraint. No such sovereignty exists in the United States, and it is doubtful if it exists anywhere without some limitation.

The third essay treats of the position and functions of the legal profession in our system of government. The fourth is an interesting historical account of the development of the "social-compact theory," as expounded by Hobbes, Locke, Rousseau, Kant and others, with its application in the Mayflower compact and the Massachusetts Bill of Rights.

This volume of essays will be welcomed by all students of political science. It is an admirable specimen of intelligent and unimpassioned reasoning upon the subjects about which it treats. FREEMAN SNOW.

Martin Van Buren, to the End of his Public Career. By GEORGE BANCROFT. New York, Harper and Brothers, 1889. — 239 pp.

Two years ago Mr. Edward M. Shepard formally re-opened the case of Martin Van Buren. The candid narrative and independent yet sober judgments of the volume which he contributed to the *American Statesmen* series are well calculated to dispel prevalent misconceptions. The book before us continues this good work. Mr. Bancroft has pre-

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sented in clear outline the political career of Van Buren from its beginning just before the outbreak of the second war with England to his dignified retirement from the presidency in 1841. The first chapter, which is entitled "Early Life," covers the period previous to his election in 1812, at the age of thirty, to the Senate of New York. The narrative deals almost exclusively with his study of law, his immediate and deserved professional success, and his early participation in politics. The second chapter, the title of which is "Eight Years in the Legislature of New York: 1812–1820," describes a great deal of capital work for democracy, for the state of New York, and for the Union. "In his first legislative year," says Mr. Bancroft, "he sustained the war, foreshadowed the evils of privileged banking and protested against imprisonment for debt." If to this enumeration a constant and efficient support of the Erie and Champlain canal projects be added, we have the main features of his legislative programme for the entire period. The third chapter, on "The State of New York in Convention: 1821," is one of the best in the book. Van Buren rendered distinguished services in this very important body, and the account describes them worthily. The fourth chapter, which covers Van Buren's work in the Senate of the United States from 1821 to 1829, shows that he was not less faithful and courageous in his support of democratic ideas at Washington than he had been hitherto in his native state. The fifth chapter relates his experiences and conduct as secretary of State, as minister, and as vice-president, from 1829 to 1837. The sixth and final chapter deals with Van Buren as president.

Mr. Bancroft follows the excellent method of letting his subject speak for himself. A large portion of the book is made up of quotations from speeches and other public utterances; indeed, so numerous and well-chosen are these passages that the attentive reader can obtain from them at first hand a very fair acquaintance with Van Buren's political views. Moreover such a reader, if unprejudiced, will be ready to concede that previous to 1841 the political career of Van Buren was based on well-defined principles; and that in the support of these principles, he showed a devotion, a consistency, a firmness, and a courage which are as rare in the annals of politics as they are honorable. Mr. Bancroft's conclusion that "the characteristics of Van Buren as a statesman were a firm reliance on principle and, in the darkest hour, a bright and invigorating hopefulness," seems felicitous because it seems amply proved.

But while this book serves a good cause and serves it well, it is not altogether satisfying. It breaks off before the end is reached. The title reads: *Martin Van Buren to the End of his Public Career;* and the narrative terminates in 1841, twenty-one years before Van Buren's death. But during this eventful period he was always an interesting figure in politics, and at times a powerful factor. Moreover it was during these

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years that he experienced that singularly complete loss of public confidence which Mr. Bancroft seeks to restore. A just estimate of a public man must take into account every portion of his public conduct. In the second place the tone of these chapters is too unvaryingly eulogistic. It may seem presumptuous to criticise the literary art of Mr. Bancroft, but one cannot help thinking that the picture he has painted would be more distinct and impressive if it were not so lacking in shadow. In Van Buren's relations to the civil service, to slavery, and to the "gag laws"— which Mr. Bancroft seems almost to ignore — there is something which to most Americans does not readily explain itself. Lastly the strong Democratic sympathies and convictions of the writer are so apparent that with a large and important class of citizens his plea will not have the weight to which, on the score of merit, it is justly entitled.

ANSON D. MORSE.

The Constitutional History and Government of the United States. A Series of Lectures by Judson S. Landon, LL.D. Boston and New York, Houghton, Mifflin & Co., 1889. — vii, 389 pp.

The Constitutional History of the United States as seen in the Development of American Law. A Course of Lectures delivered before the Political Science Association of the University of Michigan by Judge T. M. Cooley, Hon. Henry Hitchcock, Hon. George W. Biddle, Professor Charles A. Kent, Hon. Daniel H. Chamberlain. New York and London, G. P. Putnam's Sons, 1889. — 296 pp.

Each of these volumes contains a course of lectures delivered before college students. Professor Landon's book presents the instruction offered to the senior class at Union College during the four years that he presided over that institution. The other volume consists of a series of five discourses before the students of all departments of the University of Michigan, prefaced by an introduction from the pen of Professor Henry Wade Rogers.

Professor Landon has undertaken the great task of presenting a view of the constitutional history and law of the United States and an examination into the philosophy of our complicated political system within the compass of fifteen lectures. It must be admitted that he has achieved a great if not an unqualified success. He has recognized the limitations imposed by time and space and has carefully and wisely selected the most salient facts from the great mass of details. Still his lectures are far from a dry statement of principles; he has introduced just enough illustrations to impress the theories upon the memory of hearer or reader without overburdening it.

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The chief objection to his work lies in the fact that it does not exhibit sufficient familiarity with the fundamental notions of political science. The author does not appreciate the scientific meaning of such terms as nation, government, sovereignty. His exposition is not based upon the principles which govern political and social activity; it follows that many historical events of prime importance "happen," according to Professor Landon, instead of resulting as the inevitable consequence of precedent conditions or events. In a word, the causal nexus is not exhibited, and the most valuable lesson of constitutional history is lost. A specific defect arising from the ignoring of the laws of political science is the very inadequate treatment of the power of amendment in the constitution. Furthermore, the author is sometimes loose in his use of terms with which every constitutional lawyer and every well-educated American must be familiar.

The second and third parts of Professor Landon's book deserve nothing but praise. They treat of constitutional law, and especially of the function of the Supreme Court; of the nature of the government, the dangers which beset it, and its probable future. They are altogether free from the blemishes pointed out above. Especially good is the tracing of the steps by which the Supreme Court has advanced to the exalted position that it now holds from that which it occupied during the first twenty years of its existence. The somewhat narrow spirit in which the last three amendments have been interpreted is also pointed out and traced from the Slaughter House cases in 16 Wallace to Spier's case in 123 U. S. Reports.

It is to be hoped that a second edition will contain a list of cases cited, the absence of which impairs the value of Professor Landon's work as a book of reference.

The University of Michigan lectures contain an extended examination of Professor Landon's second topic. Four jurists have divided the century of the Supreme Court's existence between them. Judge Cooley treats of the time of Chief Justice Jay; Mr. Hitchcock of Chief Justice Marshall's incumbency; Mr. Biddle of Chief Justice Taney's; and Professor Kent of the years since 1864. Mr. Chamberlain adds a lecture on "The State Judiciary and its Place in the American Constitutional System."

Judge Cooley begins his contribution with an explanation of the novel position assigned to the federal judiciary — that of a co-ordinate department of government, charged with the duty of interpreting the supreme law and pronouncing upon the validity of the acts of the other departments and of the organs of local government. He then shows in how far the success of the experiment is due to the wisdom, statesmanship and courage of John Jay. Omitting any reference to the periods when

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Rutledge and Ellsworth presided, Mr. Hitchcock resumes the thread of the court's history with the accession of John Marshall. One by one the questions that the court discussed between 1801 and 1835 are taken up, and the development of the branch of constitutional law involved in each is adequately traced. This lecture is the gem of the volume. In simplicity, clearness, learning, and breadth of treatment, it is classical. In the skill with which the work accomplished by the great chief justice is summed up, it resembles an opinion pronounced by that most illustrious of American lawyers himself.

Mr. Biddle has chosen another method. He takes up seriatim the volumes between 10 Peters and 1 Wallace, and selects from each the cases that he thinks of prime importance. In this manner he examines fifty-eight cases. A great many of them are not upon points of constitutional law at all. Some are on questions of practice, some on matters which came before the Supreme Court merely because of the character of the parties. It is submitted that the chronological method is not equal to the topical in presenting a subject of this nature. Mr. Biddle brings out very clearly the great work accomplished by Taney in extending the admiralty jurisdiction of the federal courts over the Great Lakes; and his discussion of the Charles River Bridge case and of the Dred Scott case is careful and interesting. Perhaps to the study of Taney's judicial opinions is to be attributed the somewhat particularistic view that Mr. Biddle takes of the relation of the commonwealths to the nation and to the federal government.

It was intended that the fourth lecture should be delivered by the late Mr. Justice Matthews, but his illness and untimely death prevented the accomplishment of this plan. Professor Kent accordingly prepared a lecture on this subject, which shows traces of hasty preparation. All the questions raised by the Civil War are disposed of in one page: the dictatorial power of the president, the position of the seceding states during the pendency of the Rebellion, contracts by rebels and the acts of the Confederate government. Reconstruction, the legal-tender act, the national banking act, the civil rights bill, and the subject of federal regulation of the congressional elections, are discussed at greater length. Somewhat amusing is Professor Kent's assertion (on page 234) "that no permanent evil has resulted" as yet from the extension of the power of the federal government by the last three amendments.

Mr. Chamberlain gives an interesting discussion of the question as to how far the federal judiciary is bound by the decisions of commonwealth tribunals. It contains the same misapprehension of the terms of political science that was noticed in Professor Landon's book. This leads the lecturer into very dubious expressions; as when he says, speaking of the commonwealth and the United States: "Each is truly sovereign;

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each is truly limited in its sovereignty." The term "limited sovereignty" seems to have a peculiar fascination for him. In discussing the concurrent jurisdiction of the federal and commonwealth courts arising out of the character of the litigant parties, Mr. Chamberlain fails to appreciate the great work of the federal judiciary in reconciling the conflicting decisions of commonwealth tribunals and in giving us a national, common commercial law.

ROBERT WEIL.

The Origin and Growth of the English Constitution. By HANNIS TAYLOR. In Two Parts. Part I: *The Making of the Constitution.* Boston and New York, Houghton, Mifflin & Co., 1889. — 8vo, xl, 616 pp.

In this work an attempt is made "to draw out, within the limits of two octavo volumes, the entire historic development of the English constitutional system, and the growth out of that system of the federal government of the United States." The author considers that Kemble and Palgrave opened the path and Freeman and Stubbs made broad the highway to a scientific knowledge of English political history. From the mass of facts drawn by these scholars from the sources, it must be the labor of some one to make the broad generalizations which constitute the essence of philosophic history. To this task the author devotes himself, seeking with the aid of the historical method "to trace the mighty stream of Teutonic democracy from its sources in the village moots and state assemblies of Friesland and Sleswick across the Northern Ocean into Britain, and across the Atlantic into North America." This is doing for "Teutonic democracy" rather more than John Richard Green did for the English people; for though the latter writer started from the same nebulous neighborhood, he pursued his subject across only one ocean. It is easy to see that Mr. Taylor's unconcealed admiration for Professor Freeman has made him an ardent worshipper of Teutonism triumphant; and perhaps the highest praise that his work needs is that he does not allow his devotion to this idea to make him ridiculous.

The volume which has now appeared narrates the development of the English constitution until the era of the Lancastrians, when the author considers that the structure was complete in its essentials. Criticism of his facts is disarmed by the obvious and avowed dependence upon Freeman and Stubbs. His consultation of the sources, so far as the researches of his predecessors have ferreted them out and made them accessible, has been mainly in the way of verification. While his work, then, cannot be ranked with the profound and original productions on which he depends, it may challenge the appreciation due to a concise

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and effective presentation of the substance of these earlier studies in a convenient and systematic form. The middleman has as distinct and useful a function in the dissemination of knowledge as in the distribution of material goods, and this function Mr. Taylor has excellently fulfilled. To the consumer who recoils before Bishop Stubbs' three volumes, the single volume before us will prove deservedly attractive. If any fault were to be found with Mr. Taylor's work, it would be that in the fascination which the subject exercises upon him he has allowed himself to follow his masters now and then too far into the realm of detail. A hundred pages might be eliminated without detriment to the professed plan of the book. Much of this superfluity is easily traced to the author's respect for the early Teutons and to the assumed necessity for believing that all that is valuable in the institutions of the United States originated in northwestern Germany.

In the introductory chapter is outlined the broad theory which it is the purpose of the book to illustrate. The chapter begins with the original Aryans and concludes with a discussion of the Slaughter House cases in the United States Supreme Court. Summarily, it outlines the doctrine which Freeman especially has developed, — that the great characteristics of the modern constitutional state are the principles of representation and local self-government; that these principles, so far as found in other modern states, have been borrowed from England; and that their existence in England is due entirely to the Teutonic element in the English state, by which element the ideas were imported into England from the continental homes of the invaders. Representation and local self-government alone make possible the free national state of to-day as contrasted with the free city-state of the ancient world, and each of these is a "Teutonic invention." There is much in this doctrine that is very attractive to the philosophical historian, and the labors of the great scholars who have wrought out its supports have won for the workers world-wide reputation and respect. But more or less discredit has been thrown upon the theory by the expressions of some of its over-enthusiastic admirers, who have not hesitated to proclaim that practically the whole fabric of modern civilization rests upon the simple fact that some half-savage villagers in Sleswick and Friesland used to send some of their number now and then to wrangle over neighborhood matters with their kinsmen from other villages.

A scientific appreciation of the elements of the English constitution will give great weight to the persistence of early Anglo-Saxon ideas; but it will not slight another most important consideration. The kingdom of England was not welded into unity, as sometimes seems to be assumed, by the mere agreement of petty autonomous states to coalesce. Force was the instrument of fusion, and the strong men who successfully

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employed this means were not less animated by the imperial instinct than those who did similar work on the continent. The much-lauded Teutonic principle of local self-government, left to itself, would have maintained or still further subdivided the Heptarchy. Feudalizing particularism was practically triumphant in England when the strong family of the Bastard established a stern but wholesome central power. There was no federalism in the Norman principle; whatever the theory, that principle was in fact imperial; and as such it made England, as we know it, possible. This is the point which is apt to be slighted by the admirers of Teutonism, and it is this thought which must be carefully kept in mind by the reader of Mr. Taylor's book. It must be said, however, that the author's treatment of the Norman period and of the royal power as then established is in the main very fair and is certainly very interesting. The promise of ultra-Teutonism which appears in his introduction is scarcely fulfilled in the body of the work.

The grand divisions of the present volume are entitled "The Old-English Commonwealth," "The Norman Conquest" and "The Growth and Decline of Parliament." In the last section is given a summary and a prospective view, in which latter the second volume is outlined so far as it pertains to parliamentary history in England. What the author's views of the United States constitution are to be is not disclosed. The two volumes promise to form an exceedingly useful compendium of constitutional history. The value of the first for reference is much enhanced by an elaborate analysis of the contents. As to the general accuracy of Mr. Taylor's statements no fault can be found, though an inexcusable error appears on the fourth page. Aristotle is there made to express the opinion that "the state differs from the household only as to the number of its members." A little care would have revealed that Aristotle mentions this as a doctrine of certain philosophers (meaning Plato), declares it to be a false doctrine ("ταῦτα δ' οὐκ ἔστιν ἀληθῆ"), and enters into his famous analysis of the household to prove that it is false.

WM. A. DUNNING.

Speech before the Parnell Commission. By Sir CHARLES RUSSELL, Q.C., M.P. London and New York, Macmillan & Co., 1889. —xii, 615 pp.

Scientific treatment of a great public question can scarcely be looked for in the plea of an advocate; yet in this substantial volume, which contains Sir Charles Russell's opening speech for the defence, the student of Irish history may find invaluable material for the elucidation of existing problems. While it must be borne in mind that but one side of a great controversy is presented, immense aid is to be derived for com-

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prehending the whole from the clear and systematic form in which the brilliant pleader has arranged the part. Supplemented by the address of Sir Henry James on behalf of *The Times*, nothing more will be necessary for an intelligent judgment on the present relations of England and Ireland.

Mr. Parnell's counsel at the outset protests against the apparent assumption by his adversaries that the agitation which took form in the Land League of 1879 is an isolated phenomenon, to be investigated and judged without reference to earlier history. On the basis of this protest, a hundred pages of his address are devoted to an historical survey of Irish agrarian and political agitation. He makes it perfectly clear (and, with a lawyer's adroitness, largely by quotations from Tory sources) that there was nothing unprecedented either in the causes, the results or the forms of the disturbances which characterized the period of Land-League activity. Substantially all that can be declared novel in this period is the more open and constitutional organization adopted, in name at least, by the seekers after agrarian reform, as contrasted with the secret and revolutionary combinations which, in reference to that object, always hitherto prevailed. There is of course much mere assertion, for which evidence is promised, as to the relation between agitation and crime. Whether the influence of the league or the application of coercion laws is responsible for the astonishing fluctuations in crime which the statistics reveal, is a central point of contention now, as it always has been, between the opposing factions. But one fact stands out beyond question, — and Sir Charles does not fail to present it in its most effective form, — that if professed ends can justify the means, the Land League of 1879 is justified; for practically all its demands of a decade ago are to-day embodied in the statutes of the realm. The counsel's plea in connection with the matter is worth quoting, both as well expressing a pregnant fact and as illustrating the tone of fairness which pervades the whole speech. After quoting a declaration of Mr. Chamberlain that the action of the Land League made possible the remedial measures of 1881 and succeeding years, he says:

> And what does that mean? My Lords, it points to a grievous vice in our political system. It does not mean — I have never thought it, I have never said it — it did not mean that honest men who have their attention called to the wretched state of Ireland and who form the representation of Scotland, England and Wales are not anxious according to their view to do their duty; but it means that there is a *vis inertiae* prevailing in the legislature in relation to Irish questions, partly caused by the pressure of, as it is thought, more important concerns, partly from want of information, partly from class interests, partly from prejudice, until it is literally true to say that, go over the last hundred years and trace the story of its remedial legislation, and you will find

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that there is hardly one, if there be one, of the measures of that character which are to be found on the statute book which has come as a free-will offering of the legislature and which has not come as the result of agitation, sometimes constitutional, sometimes unconstitutional, but always after pressure.

Only four out of the twenty-three chapters in the book are so closely devoted to the case proper as to lose interest for the reader who has not familiarized himself with the evidence. Outside of these and the part relating to affairs before 1879, the speech offers the best extant history of the whole Parnell movement from the Parnell standpoint. There is a tone of moderation and sweet reasonableness about the presentation which is in winning contrast with the hysterical productions of other writers on the same side. The reader may not be altogether convinced that the great Parnellite associations have been unmitigated blessings; he may not be absolutely certain that the Irish leaders were as discreet as possible in their dealings with the "physical force" element among their followers; but he will feel, on laying down the book, that in the choice of leading counsel in the controversy with *The Times* a type of practical wisdom was displayed which could have no higher eulogy than the work before him.

WM. A. DUNNING.

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